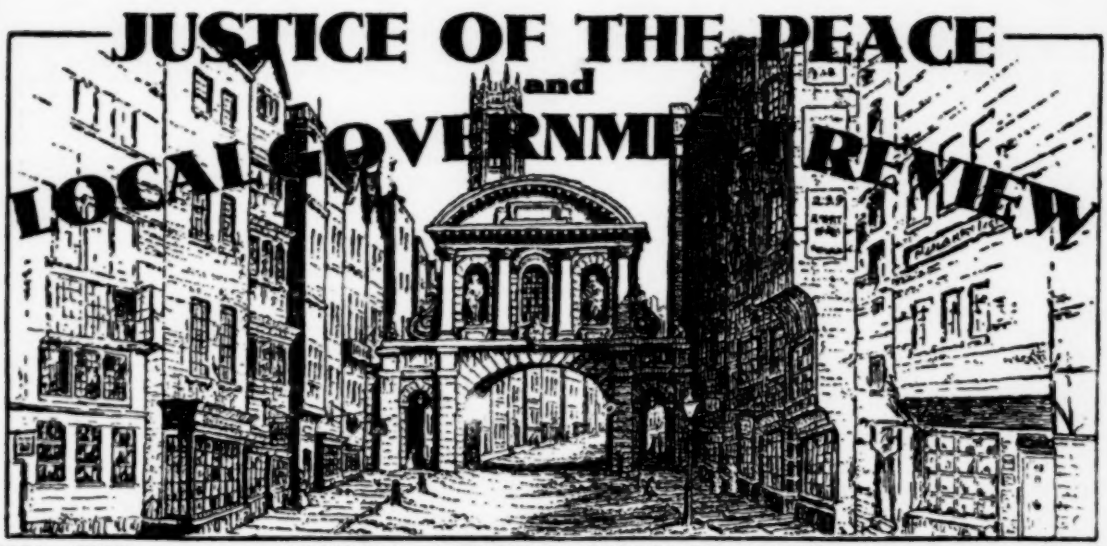

VOL. CXVI LONDON: SATURDAY, FEBRUARY 9, 1952 No. 6

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Official & Classified Advertisements, etc.

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COUNTY OF SURREY

Appointment of Deputy Clerk of the Council

THE Surrey County Council invite applications from solicitors who have had considerable practical experience of administrative and legal work in Local Government, for the appointment of Deputy Clerk of the County Council.

The salary for the post will be £2,350 per annum inclusive, and its holder will be entitled to a mileage allowance for the use of a private motor car whilst engaged on official duties and subsistence allowance, upon scales applicable to the county officers of the county.

The Deputy Clerk shall not engage directly or indirectly in private practice but shall devote his whole time to the duties of the office.

The appointment may be terminated by three calendar months' notice in writing on either side at any time. It is superannuable under the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination by the County Medical Officer.

Applications (endorsed "Deputy Clerkship") giving details, of age, legal and academic qualifications, experience, past and present appointments, and other relevant information, together with the names of three referees from whom inquiries may be made, must be received by me not later than March 10, 1952.

Canvassing, directly or indirectly, will disqualify a candidate for the appointment.

T. W. W. GOODERIDGE,
Clerk of the County Council.

County Hall,
Kingston-upon-Thames.

COUNTY BOROUGH OF SOUTHEND-ON-SEA

Male Probation Officer

APPLICATIONS are invited for the appointment of a male probation officer in accordance with the provisions of the Probation Rules, 1949.

Applications, giving full particulars and the names of two referees, should be sent within seven days from the date of the publishing of this advertisement, to:

H. HOMFRAY COOPER,
Secretary to the Probation Committee.

1 Nelson Street,
Southend-on-Sea.

Amended Advertisement

BOROUGH OF BEXLEY

APPLICATIONS are invited for appointment under N.J.C. Service conditions of Senior Assistant Solicitor with three years' legal experience. Salary within Grade A.P.T. IX, plus London "weighting" allowance.

Forms of application, with conditions of appointment, may be obtained from the undersigned, to whom completed applications endorsed "Senior Assistant Solicitor" must be returned by February 22, 1952. Canvassing disqualifies.

W. WOODWARD,
Town Clerk.

Council Offices,
Bexleyheath,
Kent.

CITY OF PLYMOUTH

Junior Assistant Solicitor

APPLICATIONS are invited for the appointment of Junior Assistant Solicitor in my office within Grades Va—VII (£600—£760 per annum) of the A.P.T. Division of the National Scales. Commencing salary will be according to the date of admission. Previous experience in a local government office is not required; good conveyancing experience is essential. The appointment is superannuable, and the successful applicant will be required to pass a medical examination.

Applications, which must be received by me not later than Tuesday, February 19, 1952, should give particulars of the applicant's age, education, articles, date of admission, present and previous appointments and legal experience, and should state the names and addresses of not more than two referees as to character and ability.

COLIN CAMPBELL,
Town Clerk.

Pounds House,
Peverell, Plymouth.

STAFFORDSHIRE COMBINED PROBATION AREA

Appointment of Full-time Probation Officers

APPLICATIONS are invited for the appointment of a full-time male and a full-time female probation officer in the area of the Staffordshire Combined Probation Committee.

The appointment will be subject to the Probation Rules and the salary will be in accordance with the rules together with a travelling allowance. The salary will be subject to superannuation deductions and the selected candidates will be required to pass a medical examination.

Applications, stating age, qualifications and experience, and accompanied by copies of not more than three recent testimonials, must reach the undersigned not later than Saturday, February 23, 1952.

T. H. EVANS,
Clerk of the Peace.

County Buildings,
Stafford.

APPLICATIONS invited from men who are familiar with the work of petty sessions, quarter sessions and assize courts; experience in local government office not necessary. Candidates must be quick and accurate shorthand-writers and typists. Salary will be according to qualifications and experience but will not exceed £490 a year. Office hours at the rate of 38 a week; two Saturday mornings free in four weeks or paid for as overtime; eighteen working days' holiday; sick pay allowances; superannuation; canteen.—Applications in own handwriting should be addressed as soon as possible to the County Clerk, County Hall, Chelmsford; should state particulars of age, education, qualifications and experience; and give the names and addresses of three referees. Canvassing forbidden.

BOROUGH OF BECKENHAM

Appointment of Town Clerk and Solicitor

APPLICATIONS are invited from solicitors with wide municipal experience for the appointment of Town Clerk and Solicitor to the Corporation.

The conditions of service and the salary scale recommended by the Joint Negotiating Committee for Town Clerks and District Council Clerks have been adopted and applied to the appointment. The population of the borough according to the 1951 preliminary Census reports was 74,834. The salary will commence at £2,000 per annum and proceed to a maximum of £2,250 by two annual increments of £100 and one of £50.

The appointment will be subject (*a*) to termination by three months' notice by either party, and (*b*) to the provisions of the Local Government Superannuation Act, 1937. The successful candidate will be required to pass a medical examination, and to take up duty on or about June 9, 1952.

Applications, giving essential particulars and the names of three referees, should be delivered to the undersigned not later than Monday, February 25, 1952. Canvassing will disqualify.

C. ERIC STADDON,
Town Clerk.

Town Hall,
Beckenham,
Kent.
January 29, 1952.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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NOTES of the WEEK

The King

The awful suddenness of His Majesty's death, when we all hoped he was well on the road to recovery from his operation last year, has left our Country, the Commonwealth and Empire, and our friends among the nations stunned and bewildered. His Majesty's devotion to duty will be a pattern for all time. The love his people bore him will be heaped upon our new Queen, while our hearts go out to her in sympathy as do they also to her gracious Mother, her gracious Grandmother and her Family.

Her Majesty succeeds to the Throne at almost exactly the same age as that of her great predecessor Elizabeth Tudor in 1558. May her Reign be as long and as glorious.

Probation in Worcester

Reports of probation officers and probation committees continue to emphasize the increase and importance of after-care work now being undertaken by probation officers. In his report for the year 1951, Mr. J. C. Cooper, probation officer for the city of Worcester records a considerable increase compared with 1950. The cases come from approved schools, borstal institutions and prisons, and it is the ex-prisoner who is likely to be the most difficult problem. Of seven cases dealt with by Mr. Cooper during the year 1951 he writes :

" All of these had been serving sentences of three or four years' penal servitude or corrective training, all had previous prison sentences, and of the seven cases concerned all had an average of six criminal convictions. It will be appreciated, therefore, that men of this type require to be dealt with very differently from first offenders on probation, require considerable and intensive efforts on their behalf, particularly in the early days after their release. With such material returning to old haunts, old associates and old temptations, the percentage of successful cases can hardly be expected to be so large. Of the seven under supervision during the year, four were re-convicted of serious offences within six months of their release and sentenced to further terms of imprisonment.

" In each case they found (or were assisted to find) employment within a few days of their return to Worcester, were assisted with working clothes and lodgings, and given every assistance to do well. There was no material reason for the commission of fresh offences, and their breakdown is the more disappointing."

Both Mr. Cooper and his colleague Mrs. Strangeman attach value to the help and advice they receive from case committees, and at their instance meetings were held in addition to the usual quarterly meetings. There is no doubt that case committees are of benefit to probation work, partly because of the support the officers feel they are receiving, and not less because of the increased insight and interest they stimulate in the justices themselves.

Matrimonial work has decreased a little but remains considerable. In connexion with the question of securing regular payments under court orders, there appears to be an interesting experiment being carried out in Worcester. The report states :

" Following means inquiries, I have, at the request of the court and with the consent of the men concerned, obtained their authorization for deductions from wages by their employer in settlement of court orders. Such arrangements work satisfactorily so long as the man concerned remains in the same employment. They are often welcomed by employers, preventing, as they often do, the loss of a satisfactory employee by committal to prison for non-compliance with the court order. Of six such arrangements made during the year, four have terminated by removal to other employment, but two are still working quite well."

During the year 1951, there was a substantial increase in the number of reports furnished by the probation officers for the information of the court. This is satisfactory as indicating the wise policy of the magistrates in seeking to know as much as possible about offenders before deciding on punishment, probation or other treatment.

Attempted "Taking and Driving Away": The Powers of the Court

Now that the Court of Criminal Appeal in *R.* v. *Fussell* (1951) 115 J.P. 562, has resolved the doubts which had formerly existed as to the competency of a summary court to deal with an attempt to take and drive away a motor vehicle, it is reasonable to expect that the summary courts will frequently be asked to deal with such offences. For this reason it is perhaps worth noting that in one of the metropolitan courts recently a magistrate, who convicted two defendants of this offence of attempting to take and drive away a motor car, was asked to consider the question of disqualifying them, but refused so to do on the ground that he had no powers to make such an order since his powers of imposing a disqualification under s. 6 of the Road Traffic Act, 1930, was restricted to cases in which a person is convicted of " any criminal offence in connexion with the driving of a motor vehicle." If there had been evidence to show that the defendants had in fact driven the vehicle then the

substantive offence under s. 28 would have been committed, but since the magistrate had found that there had been an attempt only we think that the magistrate was clearly right in holding that there was no offence in connexion with the *driving* of a vehicle.

It will be recalled that in ***Shimmell*** v. *Fisher and Others* [1951] 2 All E.R. 672; W.N. 484, the Divisional Court considered the meaning to be attached to the words "takes and drives away," and construed it to cover not merely those cases in which the vehicle is moved under its own power but also cases in which the vehicle is pushed away. In view of this decision it may well be that in a number of cases in which previously there would have been a conviction for an attempt to take and drive away there will now be a conviction for the completed offence, and the defendants will accordingly be liable to be disqualified.

What is Obstructing the Police?

An unusual charge before the Derby county magistrates recently involved a question which might some day be raised in the High Court upon an appeal by case stated, as to the meaning of the word "obstructs."

Before the court was a man who pleaded not guilty to unlawfully and wilfully obstructing a police constable in the execution of his duty. According to a report in the *Derby Evening Telegraph*, evidence was given that a constable went to a house with a bus driver who had been involved in an accident. The driver was warned that he need not make any statement, but said that he was willing to do so. The defendant, who was a foreman in the employ of the same company, came in and told the driver to stop giving a statement. He was asked to leave the house, at the request of the occupier, but it was some minutes before he would do so. The driver then declined to continue with the statement, and it was alleged that when he and the police constable went outside to take measurements of the bus the defendant continued to obstruct the constable.

On behalf of the defendant it was submitted that there was no case to answer, as the defendant had a perfect right to stop the driver from making a statement and there was no evidence of any other obstruction. This submission was upheld.

No doubt the argument for the prosecution would be that it is the duty of a police constable to investigate the facts when it appears that an offence may have been committed, and that in the course of that duty he should seek to obtain statements from possible witnesses. As the driver might be in some danger of prosecution, the constable took the precaution of telling him he was not bound to make a statement. If the driver chose to do so, that might assist the course of justice, and it would be argued, anyone who intervened to stop the statement, would be obstructing the constable in the execution of his duty.

That is, we think, putting the case at its highest. The answer is that it is going rather far to say that a person who gives what may be sound advice to a person who is making a statement which he is certainly not bound to make, is guilty of a criminal offence. Immediately after an accident, a person involved may not be in the best condition to make a clear and accurate statement, whether he is a possible defendant or not. A legal adviser might very well tell him to wait a little and collect his thoughts before making a statement. In the case of a driver involved in the accident, he might make admissions which could not only involve him in a prosecution, but could also involve his employers in an action or impair their chances of resisting one. It might even be suggested that if a person who was the means of preventing another from making a statement could be convicted of obstructing the police, the next step would be to argue that a witness who declined to make a statement to a constable could also be convicted.

Decided cases have shown that to constitute the offence there need not be physicial obstruction, but we know of no authority for the proposition that such facts as were alleged in the prosecution at Derby constitute the offence.

Stealing Lead from Churches

The high price obtainable for lead has given rise to a regular epidemic of stealing from the roofs of buildings, including churches. There can be no excuse for this kind of crime—it is not the result of sudden temptation, there is now little unemployment and poverty, and the reason for it is simply unscrupulous greed. When offenders are brought to book they have no right to expect leniency.

Nevertheless, we cannot go so far as the rector of a north country parish, who, according to a press report, addressed parishioners in his church after it had suffered from the depredations of thieves who had stolen lead from the roof and made the church no longer weather-tight.

He suggested that flogging should be reintroduced for men who had sunk so low that they would stoop to steal lead from a church.

Ten churches were being robbed of their lead every month, the rector is reported as saying, showing that there were men whose hopes of gain were much greater than their fears of a feather bed in prison. "There is only one feather-bedded class in England today," he said, "This is the criminal class, receiving free board and lodging, with cigarettes and magazines thrown in. But feather-bedding of criminals can go too far."

We share the rector's indignation at a despicable type of crime, but not his views as to the remedy and as to prison adminstration. There are some people who advocate the re-introduction of corporal punishment for crimes of great brutality and violence but there cannot be many, even among these, who would wish to extend a power to order flogging to cases of stealing.

As to prison conditions, the speaker seems to have suggested that prisoners live under easier conditions than any other class in the community. Here again he may find supporters among those who believe that prisoners of today are treated too well, but even these would hardly go so far as to suggest that they are the only feather-bed class today. Does the rector really imagine that prison food, prison routine and loss of liberty make for pleasanter conditions than are to be met with outside, or that prisoners have large supplies of cigarettes and magazines?

Those who have seen most of prisons and prisoners and have studied the history of penal methods, know the more humane treatment has produced better results than extreme severity, and that if occasionally mistakes have been made these have in no way discredited the modern policy of reformative rather than purely retributive punishment.

Smuggling

Watches and nylons, we are told, are being smuggled into the country on an increasing scale. Unfortunately, there are many people who regard a little smuggling as a comparatively harmless escapade, tinged with just enough risk to make it exciting. These are often perfectly respectable people who would never stoop to defraud an individual person, and whose standards of conduct in most matters are high. They feel no compunction about "doing" the government, however, because they fail to realize that this is in reality a fraud on their fellow taxpayers, from whom the authorities must somehow collect sufficient revenue. Those who avoid paying their share put something more on the rest.

Such offences are prevalent and hard to detect and so it is not surprising that penalties can be high. Offenders who are caught can most appropriately be dealt with by fines which make the illicit transaction thoroughly unprofitable, and publicity may make others who contemplate similar offences pause and consider the prospect of a heavy money penalty.

Apparently there is now a kind of organized traffic in certain dutiable articles which may be described as commercial conspiracy. This is an offence in a graver class than that of the individual who tries on a solitary occasion to get through the Customs with articles for personal use or gift. Smuggling on the grand scale is an offence of serious gravity, and it can be visited with long terms of imprisonment. Even on summary conviction the punishment can be as heavy as any that magistrates have power to impose.

Local Budgets and National Economies

Suppose the revenue expenditure budgets of local authorities in England and Wales for the financial year 1952-53 total £800 million instead of the £850 million which they might have reached apart from current exhortations to reduce public (and private) expenditure, what will this mean? For example, that local authorities have made a material contribution to the restoration of national economic health, that they have steadied social progress or impaired it unwisely, or that they have merely released, through lightening local rates, national taxes, and trading charges, £50 million for private inflationary expenditure?

The restorative contribution would be partly financial, as an expression of action measured in that manner, and partly psychological, in assistance towards creation of a healthier economic climate. Financial requirements may be diminished in a variety of ways. An improvement of administrative methods may save manpower, not necessarily by immediate and specific displacement, but more in the sense that less manpower is used ultimately following its redistribution, leaving a residuum, not always easy to quantify and usually harder to trace through a sequence of altered uses, though, nevertheless, yielding an economy of labour strength. Knowledge that local authorities were restraining expenditure would influence some individuals to do the same, partly by reason of subconscious conformity with leading opinion, partly in acceptance of desirability postulated in ostensibly informed quarters, and partly from encouragement to save when anti-inflationary forces are working towards retention of value in savings; in the round, especial restraint of expenditure by local authorities would help to revive a greater degree of personal responsibility in the use of money which, among its numerous functions, measures the expenditure of national resources, including supplies from overseas and exchangeable products of home industries.

The effect on social progress resultant from deceleration or reduction of expenditure by local authorities and other public bodies has to be viewed from a number of angles, emanating, for the present purpose, from a nodal assumption that the expenditure really signifies progress. A view that its reduction must necessarily be harmful is superficial, sometimes resting upon idealistic dogma redolent with failure to face the realities of interminable economic battle. Superficially, expansion of social services by expenditure from public funds is still possible when the general economic circumstances of a nation are worsening. This illusion may be dissipated by a quick leap to the conclusion of such constant expansion, when the whole working population would be engaged in providing, or trying to provide, each other with social services, which is absurd. Actually, social services are mainly practicable as an allocation from a standard of living, high or low, and when that standard is falling it would be impolitic to permit considerable distortion to develop in the size of respective allocations, with the reservation that elements, such as the major part of the educational system, which maintain and build up international competitive capacity, are irreducible, and may even require greater emphasis in order to make a lower standard of living secure.

The third exemplary question, concerning release of £50 million for private inflationary expenditure, largely depends for its answer upon national taxation in the coming fiscal year. Parliament has the power, notably exercised since the war, to reduce private incomes without, as local authorities automatically must, providing some service in return. Exercise of that Parliamentary power is probable, though its exercise may be concealed on the coming occasion by absorption of additional revenue thus gained in meeting risen costs of carrying on existing services and discharging previous commitments. It would indeed be grotesque if local authorities' self-sacrificial zeal in effecting dubious economies was antithetic to national policy of deflation. Some sound arguments could be adduced for general legislation conferring power on a local authority to establish an economic reserve fund to be built up in certain circumstances or at the instigation of the central Treasury when side-channelling of spending power is deemed desirable, and drawn upon when conditions are propitious for its use.

A NOTE ON INDECENT ASSAULT

By C. W. L. JERVIS

In two recent Cases Stated and in one appeal to the Court of Criminal Appeal, the ingredients of the important, if unpleasant, offence of indecent assault have been considered.

The respondent in *Beal* v. *Kelley* [1951] 2 All E.R. 763; 115 J.P.N. 566, exposed his person to a boy of fourteen and asked the boy to handle him indecently. The boy refused and tried to go away, but the respondent caught hold of him and pulled him towards himself. The justices had dismissed the information below, holding that the offence "was in fact an attempt to procure the commission of an act of gross indecency with another male person," which they had no jurisdiction to try. The Divisional Court expressed no opinion whether or not the justices were right in that view, but held that in pulling the boy towards himself the respondent committed an assault, "a hostile act because it was done against the boy's will. It does not matter that the boy could not give consent." The Lord Chief Justice then proceeded to approve of the definition given in *Archbold* (32nd edn., p. 1067), namely, "an assault, accompanied with circumstances of indecency on the part of the prisoner." His Lordship explained that the indecency there referred to meant indecency offered towards the person alleged to have been assaulted, and said he had no doubt that the conduct of the respondent amounted to indecent assault.

There must be, therefore:

(*a*) An assault by the prisoner.

(*b*) Circumstances of indecency accompanying the assault and offered by the prisoner to the person assaulted.

The absence of ingredient (*a*) was strikingly established in the second case stated *Fairclough* v. *Whipp* (1951) 115 J.P.N. 617.

The respondent was urinating near where some young girls were playing. He asked one of them, aged nine, to touch his person, and she did so. The justices found that this conduct was indecent, but that the facts did not constitute indecent assault and dismissed the information. The Lord Chief Justice said: "I do not know of any authority stating that, where one person invites another to touch him, that can be said to be an assault. The question of consent or non-consent only arises if there is something which can be called an assault which, without consent, would be an assault. If that which was done to the girl would have been an assault if done against her will, it would also be an assault if it were with her consent and were of an indecent nature, because she cannot consent to an indecent assault . . . before we consider the question whether there is an indecent assault we must consider the question whether there is an assault, and I cannot hold that an invitation to somebody to touch the invitor can amount to an assault on the invitee." Thus there was no assault—a complete absence of a hostile act by the respondent towards the girl—and the appeal was, with regret, dismissed by the Divisional Court, who expressed no opinion whether the facts amounted indecent exposure within the meaning of the Vagrancy Act, 1824.

At p. 58 of [1952] 1 All E.R., appears a note of *R.* v. *Burrows* where the facts were similar to those in *Fairclough* v. *Whipp*, *supra*, with the important difference that the victim was a boy. The Court of Criminal Appeal, following *Fairclough* v. *Whipp*, held that the appellant should not have been convicted of indecent assault, but that, in the circumstances, the proper charge was one of committing an act of gross indecency. In practice, it is submitted that all these are important decisions. The logic of the reasoning in *Fairclough* v. *Whipp*, *supra*, is perfect, if one may say so with proper deference, but it is believed that hitherto the view has been widely held that, as a child cannot consent to any indecent act, the mere passive conduct of a prisoner in remaining still while a child did something indecent to him amounted to an indecent assault on the child. Section 1 of the Criminal Law Amendment Act, 1922, states that "It shall be no defence to a charge of indictment for an indecent assault on a child or young person under the age of sixteen to prove that he or she consented to the act of indecency." Unhappily this rather begs the question, because if the child in *Fairclough's* case had not *in fact* consented to the act, the circumstances giving rise to the charge would never have arisen. Hence, where there is no assault, the sex of the victim is of first importance. If the victim be a girl, the only offence is probably indecent exposure. Unfortunately, the facts may not warrant even this charge. Those of us who have to deal with this kind of thing will recall many cases where little girls have been asked to do thoroughly indecent things to a man who has not "exposed" any part of his body. In such a case the facts will require most careful examination if the law is not to be held lacking in an important respect. The "hostile act" necessary to constitute the assault need be only very slight. Even if the prisoner be passive *ab initio*, he may later do something, in the majority of cases, which amounts to an active and hostile act, however small. Generally speaking, the prisoner's case, in such circumstances, will be devoid of merit and it is thought that the courts will not be slow in finding the necessary "hostile act."

If the victim be a boy, *R.* v. *Burrows*, *supra*, establishes that the proper charge is one of committing an act of gross indecency and no difficulty should arise (provided the prisoner is a male person), but one is not too sure of this. It is of the essence of gross indecency that the two accused are acting in concert (*R.* v. *Hornby and Peaple* [1946] 2 All E.R. 487; 110 J.P. 391). Where the boy is under sixteen, he is perhaps incapable in law of acting in concert with the prisoner, but the proposition is thought to be untenable. *R. v. Pearce* [1951] 1 All E.R. 493 throws some light on *Hornby's* case and was, it appears, cited to the Court of Criminal Appeal in *Burrows'* case.

Where the prisoner is a woman who, without committing any "hostile act," procures a boy under sixteen to act indecently with her, one is driven to the remarkable conclusion that no offence is committed. This would appear to be so even if full intercourse takes place, although in the nature of things, the woman may then do something sufficiently active to amount to a "hostile act" and enable a charge of indecent assault to succeed.

DELEGATION OF PLANNING FUNCTION

THE POSITION AFTER THE DEVELOPMENT PLAN IS OPERATIVE

[CONTRIBUTED]

By s. 34 of the Town and Country Planning Act, 1947, provision is made for the delegation of functions to councils of county districts. It provides that the Minister may, after consultation with such authorities or associations of local authorities as he considers appropriate, make regulations for authorizing or requiring local planning authorities to delegate to the councils of county districts in their areas, with or without restrictions, any of their functions under Part III of the Act, and such regulations may be made so as to apply generally to all local planning authorities (other than the councils of county boroughs) or to such of those authorities as may be specified in the regulations.

By subs. (3) the regulations may make provision:

(*a*) For requiring any council to whom functions are delegated to perform those functions on behalf of the local planning authority;

(*b*) For transferring to any such council any liability of the local planning authority to pay compensation under Part III of the Act in respect of anything done by that council through the delegation;

(*c*) For the transfer and compensation of officers.

The regulations are the Town and Country Planning (Authorization of Delegation) Regulations, 1947, S.R. & O. 1947, No. 2499. They require the consent of the Minister not only to the making of the agreement between planning authority and county district council, but also to the "terms, conditions, restrictions, and reservations" in the agreement, and specific mention is made that provisions may be included for the transfer to the county district council of the liability of the local planning authority to pay compensation under Part III or Part VIII of the Act in respect of anything done by the district council in the exercise of the delegated functions. By para. 4 the termination of delegation or variation of the agreement is made subject to the consent of the Minister. It also requires that delegation agreements must state that the delegated functions are exercised on behalf of the local planning authority.

The then Minister of Town and Country Planning, by whom the regulation was made, explained the Government's policy in the matter of delegation in circular 37 dated December 21, 1947. The following are extracts from this circular:

" 2. Before the Minister decided upon the arrangements set out below, he consulted the four associations of local authorities. The arrangements relate to delegation during the period before development plans have been prepared. Fresh consideration will need to be given to the question of delegation when a development plan has been approved for any area.

" 6. As the regulations are so widely drawn, authorities may want some information about the general nature of delegation schemes which the Minister would be prepared to approve. Briefly, he wishes to allow the maximum variation according to local circumstances, and he is therefore willing to consider any arrangement which :

(*a*) Gives the county council sufficient control over development applications to ensure that the proposed development plan is not prejudiced :

(*b*) Provides machinery for dealing rapidly with applications whilst making full use of the local knowledge and experience of members of county district councils ; and

(*c*) Is acceptable both to the county council and to the county district councils.

" 7. The Minister knows that a number of counties have already given preliminary consideration to the question of delegation and that the arrangements which they are proposing fall broadly into the following two classes :

(*a*) Delegation (either total or partial) under s. 34 to some or all county district councils, subject to some such arrangement as that a member of the county planning staff may attend meetings of the planning committee of each county district council, with power to refer any case to the county planning committee, or one of its sub-committees.

(*b*) No actual delegation to county district councils but ample co-option (under Part II of sch. I) of members of county district councils on to the county planning committee and/or area sub-committees of the county council, to which the county would delegate powers of control of develpoment.

" 10. The Minister thinks that, during the period before development plans are prepared, outright delegation (as distinct from the conditional delegation mentioned in paragraph 7 (*a*)) would not be appropriate. Although he is prepared to consider proposals by a county council for outright delegation, he would need to be satisfied that the development plan would not be thereby prejudiced and he would probably require applications relating to scattered development in rural areas or to mineral development to be reserved to the county council by the terms of the delegation instrument."

Two things stand out clearly from the circular. One is the intention that the agreements should be varied to suit the various localities, and the other is the intention that the position shall be reconsidered as development plans come into operation and a strong hint is included that when the development plan is in operation outright delegation should be that aim in appropriate cases.

The latest pronouncement in the matter is perhaps that of the Local Government Manpower Committee. Certain conclusions are included in a recent report under the heading of planning. The Minister's original intention that the delegation should be by agreement with the individual county district council so as best to suit the circumstances in that county district is reiterated by the committee, although the opinion expressed is that delegation " is felt generally to be the method to adopt in the future " as against devolution. (Devolution is instanced as including an arrangement whereby the planning committee of the county district council is constituted a sub-committee of the county planning committee.) The committee supports delegation to the smallest unit of the county district firstly, because it has staff to deal with building byelaws who "are therefore able to deal with comparative matters in planning," and, secondly, because local contact is regarded " as most desirable in planning affairs." The Committee considers that any delegation should be subject to the right of the county council to request that any application for development should, in the public interest, be referred to them with the corresponding right of the county district council to refer any matter, though delegated, to the county council for consideration and decision.

Before considering the extent to which the coming into operation of a development plan makes a difference in the circumstances so as to make desirable reconsideration of the question of delegation, another problem requires some thought. The pattern of delegation agreements in the interim between the coming into operation of the Act and the coming into operation of the development plan, where such agreements have existed, has been for the district council to recommend to the county planning committtee and for the county planning committeee to send a decision on the application to the district council, and for the district council to issue the development permission to the applicant as agents of the county council.

An applicant was supposed to be better served by making his application to the county district council which was also the byelaw authority (and issued the building licences). By this means the applicant only had to deal, on the face of things, with one authority.

This type of agreement was supposed to allow the county district council to apply their local knowledge, but at the same time reserve to the county council the last word, and various provisions were made to deal with cases where the two councils disagreed, so that the contentious matter could be referred to some sort of planning appeals committee of the county council. The arrangement has worked reasonably well, especially where the county council was prepared in practice to leave decisions to the county district council, in cases other than where the development plan was obviously likely to be prejudiced if the county district council's recommendation became a decision. Wherever the county council did not adopt this practice difficulties inevitably arose.

Both county council and county district council are elected authorities and, generally, the county district councillor is nearer to his electorate than the county councillor.

The Town and Country Planning General Development Order and Development Charge Applications Regulations, 1950 (S.I. No. 728), provide in para. 5 that application for planning permission shall be made (outside London) to the county borough council, or in counties to the county district council, and require that a district council shall transmit it to the " local planning authority to whom it is made " (presumably this latter requirement is subject to the provisions of any delegation agreement subsisting).

As the applicant made his application to the county district council he naturally, in the first instance, looked to that council as the one which would deal with his application and consulted its local surveyor and perhaps other officials and, in the words of the Manpower Committee, " enjoyed the local contact " which the committee regards as most desirable in all planning affairs as between ratepayers and their technical advisers and planning officials. He would probably soon discover that the county district council had no real authority after all and that he would probably do well to make his contacts with the county council officials and not with the district council's officials only. What is more, he might become aware that local government did not present a " united front." In short, such a constitutional provision as the form of agreement described can,

in a case of disagreement, set up a strain between two elected bodies acting for the same area which could hardly be to the advantage of the ratepayers.

A few development plans have become operative and many more are nearing that event, an interesting one on the question of delegation. The Manpower Committee suggest that the county council might agree to leave the matter wholly to the district council in certain specific areas or in respect of defined categories of development. This recommendation does not seem to be limited to the period during which a development plan is in operation. In fact the precise conclusions of the Manpower Committee do not seem to be clearly referable to the interim period or later, which poses the question whether, in fact, circumstances will be materially altered when a plan is in force from what they were previously. The plan will presumably clearly define, *e.g.*, residential areas and show the permitted density, area by area. Consider, then, an application for the conversion of a single dwelling-house into separate flats. If granted it might increase in some small measure the density of the residential area in which it is situated. Of course, that could happen in many another way, *e.g.*, if more people come to live in houses as boarders. In fact, such an application is, more than anything else, a question of amenity, namely should the " conversion " be permitted having regard to the character of the area and perhaps, in some cases, of the house. Many incidental matters may be relevant, for example the question of the provision of a fire escape under s. 60 of the Public Health Act, 1936, but these are not directly involved in the application for permission to develop. The conclusion is that in such a case the position with the development plan in operation is likely to be little different than before.

The same can be said of an application for an extension to a factory in an area of industrial use ; also for permission to build a new house in a residential area. To sum up in regard to all but the odd application, the position will be very little different from what it was before. The odd application which, after the development plan, would require the consent of the Minister (of Housing and Local Government) pursuant to article 8 of S.I. 1950 No. 728 because it is for development not according to the plan, is in the same case as those applications likely to be prejudicial to the development plan in the making, which, therefore, required some special consideration by the local planning authority. There is only the difference after the plan from the position preceding it—that, after the plan, such an application is easily recognized because it requires the Minister's consent. Previously, the question being whether it would prejudice the development plan, and the making of the development plan, in the great majority of cases, having not been delegated to the district council, the county council had some reason at least for examining all applications. Especially was this so when the existing use map was not prepared in advance of the development plan.

Stress has been laid upon the necessity for a good understanding between the county council and the county district council and the respective officials, if planning is to be made to work satisfactorily. Perhaps some official exhortation on such lines is permissible but normally one takes such matters as said. So far, however, as such expressions of opinion are meant to cover lack of proper constitutional provision, they are, to say the least, undesirable and nothing much more than sentimentality. In any planning agreement a clear demarcation of responsibility is not only desirable but necessary, and that state of affairs is something which cannot be taken for granted. A district council appreciating that its decisions are only recommendations, and liable not to be accepted if the county committee does not think the same way, is, in the long run, almost inevitably a bad thing, and no amount of good will could put the matter right. What seems desirable is to have clearly distinguished that for which the electorate can squarely hold the county district council responsible and that for which they can clearly hold the county council responsible.

The provisions for dealing with differences between county council and county district council in many of the existing agreements, by reference of the matter in dispute to a special county planning appeals body, ought not to have a prominent position in any delegation agreement, and yet in numerous instances under pre-plan agreements the issue has not been between the applicant and the administration but between the county council and the county district council. That decisions on applications are to be made within the period of two months (para. 5 (8) of S.I. 1950, No. 728), is almost an impossibility in such a case, and the applicant is in the unfortunate position of suspecting that, if he appeals to the Minister after the two months have expired (so that his application is deemed to be refused), the Minister would probably delay dealing with the case until the county council and the district council had pursued the " appeal " provision in their agreement. The very existence of such a planning appeals body set up under a delegation agreement is an indication of a weakness in the agreement.

A worth while thought is to consider what might happen in the absence of delegation. Presumably the planning application would be sent directly by the county district council to the county council. The county council would have to find out as best it could what the local circumstances were. In the meantime the county district council would deal with building byelaws and the issue of building licences, etc., and the applicant would have to deal with the two authorities independently, and to be careful that he did not proceed until he had the relevant consents from both of them. Such a state of affairs might work, but the very consideration of such a position confirms that the search is for a form of administration which, whilst giving the county council as the county planning authority responsibility for broad issues that although still affairs of local government, extend beyond the boundaries of the individual county district will at the same time give the county district council control of planning, having regard to their local knowledge and their aspirations for the good development of their towns or districts.

" For forms of government let fools contest, whate'er is best administered is best." So wrote Pope, in his *Essay on Man*. Pope was the exception. He did not blame the system. Opinion more often followed Cobbett, who was very much a critic of the system as being responsible for the wrongs in public affairs. But the essayist was right so far as he put the administration not as an alternative to form, but before it in importance. No form would of itself mean the difference between anarchy or chaos. For good administration can make a bad form suffice, as bad administration can stultify a good form. And so could one go on analysing and applying the truth of the essay ; enough has been written to show that both a good form and a good administration must be the aim, and we are not fools if we continually try to improve the form.

Since July, 1948, there has been experience in an important experiment in local government, of some interest to county boroughs, and of substantial concern in the Metropolis and in administrative counties. It may have influenced many services, including education and health, though its immediately direct effect has been and must continue to be confined to planning, in which the time has now come to revise the agreements of delegation. The future of the experiment will be seen in great measure in the form of the new agreements which emerge.

" EPHESUS."

WEEKLY NOTES OF CASES

KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Byrne and Parker, JJ.)

January 24, 1952

BOTTOMLEY *v.* HARRISON

Public Health—Nuisance—Abatement notice—Person by whose act or default nuisance existed—"Owner"—Person receiving cheque and paying it into bank—Public Health Act, 1936 (26 *Geo.* 5 *and* 1 *Edw.* 8, *c.* 49), *s.* 93, *s.* 343 (1).

CASE STATED by Lancashire justices.

At a court of summary jurisdiction at Morecambe a complaint under s. 94 (1) of the Public Health Act, 1936, was preferred by the appellant, Bottomley, on behalf of the Morecambe and Heysham Urban District Council, alleging that a nuisance existed at 18 Norton Avenue, Heysham, and that the respondent, Miss Harrison, had failed to comply with an abatement notice served on her by the local authority under s. 93 of the Act as the person by whose act or default the nuisance existed. By s. 93 of the Act an abatement notice is to be served "on the person by whose act, default, or sufferance the nuisance arises or continues, or, if that person cannot be found, on the owner or occupier of the premises on which the nuisance arises . . ." By s. 343 (1): "'Owner' means the person for the time being receiving the rackrent of the premises . . . whether on his own account, or as agent or trustee for any other person." It was contended on behalf of the local authority that the respondent was the "owner" of the premises within the meaning of that section. The premises were owned by one Varley, who was abroad at the material time, and the respondent was employed by him in his office. The tenant, a Mrs. Harmsworth, paid her rent by cheque made out to Varley, and she used to get her rent book back with initials against it which were said to be the respondent's. The tenant also produced a letter in which the respondent said: "Dear Madam, I am dealing with Mr. Varley's property during his absence. On examining his records I find that the amount previously paid for garage and water is £3 *per annum*. Why is this amount now altered to £3 1*s*. 6*d*.? Yours truly, per pro F. Varley, M. Harrison." The justices held that there was no evidence that the respondent was the owner of the premises and dismissed the complaint. The complainant appealed.

Held, a person in Varley's office who merely received the tenant's cheque and paid it into Varley's bank did not receive the rent as agent or trustee for Varley; if the money had been paid into the respondent's account, or if, during Varley's absence, she had had the handling of the money and not merely the cheque, the position might have been different; the justices had, therefore, come to a right determination, and the appeal must be dismissed.

Counsel: *Threlfall*, for the appellant; *Ruttle* for the respondent.

Solicitors: *Gibson & Weldon*, for *C. E. Bottomley*, town clerk, Morecambe and Heysham; *Hiscott, Troughton & Page*, for *Bannister, Bates & Son*, Morecambe and Heysham.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

January 23, 1952.

BRADSHAW *v.* DAVEY (VALUATION OFFICER)

Rating—Mooring—Continuous use during summer—Raised and brought ashore for winter.

CASE STATED by Winchester Quarter Sessions.

On January 23, 1948, a proposal was served by the rating authority for the Fareham urban district on the appellant for the inclusion in the valuation list of a mooring at a rateable value of £1. The assessment committee for the Gosport assessment area confirmed the proposal, and the appellant entered notice of appeal to quarter sessions. Both parties then consented to the stating of a Special Case for the opinion of the Divisional Court.

The mooring in question was used by the appellant, under a licence from the Southampton Harbour Board, for a five-ton cutter called *Mist*, a sailing vessel some twenty feet in length, which was used for pleasure purposes in Southampton Water and was capable of lifting the mooring on deck, and had in fact done so. The mooring consisted of two Admiralty pattern anchors, each weighing approximately eighty pounds, connected by two lengths of ground chain, to the centre of which was attached a riding chain. The mooring was in use almost continuously during the six summer months, but each winter it was raised and brought to shore for inspection and maintenance, being replaced later at the original site when it was again brought into use.

Held, following the test laid down in *Holland* v. *Hodgson* (1872) (L.R. 7 C.P. 328), that the mooring was to be regarded, not as a fixture, but as a chattel, and was, accordingly, not rateable.

Counsel: *Ewen Montagu, K.C.*, and *William Roots*, for the appellants; *J. Scott Henderson, K.C.*, and *J. Molony*, for the respondents.

Solicitors: *The Solicitor, Inland Revenue*; *Layton & Co.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

PEDESTRIAN CROSSINGS

In view of doubts which have been raised as to the legality of pedestrian crossings following reports of an unsuccessful prosecution at Bristol on January 24, the Ministry of Transport make the following statement:

It is considered that nothing in that decision detracts from the legality of any crossing marked with stripes, beacons, and studs in accordance with the new Pedestrian Crossing Regulations, and which is included in a scheme of pedestrian crossings duly approved by the Minister under s. 18 of the Road Traffic Act, 1934, and still in force.

SALES BY AUCTION AND TENDER

Licences to sell by auction or tender goods price-controlled by the Board of Trade will no longer be required from January 28.

The Order giving effect to this change is the Sales by Auction and Tender (Control) (Revocation) Order, 1952, S.I. 1952 No. 102.

ROAD ACCIDENTS—NOVEMBER, 1951

Casualties on the roads of Great Britain in November, 1951, totalled 19,052. This was 1,034 more than in November, 1950.

The killed numbered 563, an increase of fifty-three on the previous November; and the seriously injured, 4,848, an increase of 468.

The chief increases were among pedestrians and pedal cyclists. Pedestrian casualties were 800 higher than in November, 1950, while casualties to pedal cyclists rose by 299.

DISTRIBUTION OF GERMAN ENEMY PROPERTY

From February 1, 1952, and for the following three months, the Administrator of German Enemy Property is authorized to accept claims under the Distribution of German Enemy Property Act, 1949, in respect of German enemy debts. Claim forms are now available and can be obtained, on application, from the Administrator of German Enemy Property, Branch X, Lacon House, Theobalds Road, London, W.C.1.

Different forms are provided for

(1) Claims in respect of German Reich Bonds (*i.e.*, Konversionskasse four *per cent.* Sterling Bonds, enforced bonds of the Dawes, Young and Austrian five *per cent.* loans, and enfaced Austrian Government Credit Ansalt Bonds).

(2) Claims in respect of non-Reich Sterling bonds quoted on the Stock Exchange.

(3) Claims by bankers under the standstill agreement.

(4) All other claims.

When applying for forms intending claimants should state the forms they need, or if in doubt, should give brief particulars of the debtor debts in respect of which they propose to claim.

CHILD WELFARE IN KENT

Kent County Council has now turned its children's home at Southdowns, Doddington near Sittingbourne, into a reception centre where special methods are being used to ascertain the individual needs of boys and girls entrusted to the council's care. This is claimed to be one of the first reception centres established under the Children Act, 1948, and only children who are likely to be the county council's responsibility for a long time go there. The council recognizes the importance of fully assessing each child's health, ability and other characteristics, so that the most suitable means may be found of helping the boy or girl to grow up into a happy and useful citizen.

When he comes into the council's care, the long-stay child is encouraged to regard his few weeks at the reception centre as a holiday. The staff unobtrusively observe him at play, at studies, at meals and elsewhere and he is examined by a doctor and is seen also by a psychologist and psychiatrist.

Reports by these observers are presented at a case conference and recommendations are then made for his future placing. The specialists

may agree that the boy or girl would do best perhaps in an ordinary household with foster parents, or they may believe that he would be happier in a children's home run by the county council or some voluntary organization. Sometimes, for health or other reasons, a child would develop more satisfactorily in a special home equipped to deal with some physical or mental handicap. The advice derived from the case conference, assists the county council and its children's officer to do the best they can for the child within the means at their disposal. The reception centre has accommodation for twenty-five children.

LAWYERS' CHRISTIAN FELLOWSHIP

A centenary meeting of particular interest to all lawyers is taking place on Wednesday, February 20, at 6.30 *p.m.* in the Hall of Westminster Chapel, Buckingham Gate, S.W.1. At this special gathering of the Lawyers' Christian Fellowship, the chair will be taken by Lord Justice Denning, an address will be given by the Rev. D. Martyn Lloyd-Jones, M.D., and there will be singing by the London Endeavour Choir. Tea will be served from 5.30 *p.m.* Membership of the L.C.F. is open to all lawyers and law students. There has been a steady influx of new members lately and the Fellowship seeks to mark its centenary year by a real forward movement in Christian endeavour among members of the legal profession. A warm welcome will be extended to all who can attend the centenary gathering, whether or not they are eligible for membership.

Further particulars of the Fellowship can be obtained from Mr. Francis Coningsby, Spencer House, Tadworth, Surrey.

REVIEWS

Halsbury's Statutory Instruments. Volumes 4 and 5. London : Butterworth & Co. (Publishers) Ltd. Price 29s. net.

As we mentioned in noticing the first three volumes of this new publication, it is to be completed in twenty-five volumes, and there will be a " service " (costing £4 4*s.* a year) so that the subscriber will always have upon his shelves up-to-date particulars of the statutory instruments which are of live interest, for practice in this country. The two volumes now before us contain the statutory instruments which became available before November 1, 1951, under the alphabetical titles beginning with Building and ending with Courts. This section of the alphabet contains much that is of special interest to our own readers. It may be that most of them are not concerned with Conflict of Laws, and not often obliged to think professionally about Copyright, but almost any one of the other fourteen titles in these two volumes may crop up at almost any time, in the field of local government or in that of magisterial practice. Under Building and Engineering, the statutory rules and orders and the statutory instruments enacted run from 1939 to 1951, and there are cross-references to many which impinge upon this subject but will come in later volumes. There is nothing very new about Building Societies under the title which relates to them, but there we go back to the Building Societies Regulations, 1895, which are quite voluminous and of practical importance. Burial and Cremation speaks almost for itself, but under the heading Charities there is quite a large number of instruments, mostly rather technical, mentioned in the chronological list. Some of these it has not been necessary to print, but those which are printed are, again, of direct concern to local authorities. The importance of having, as the possessor of these volumes has, an up to date set of the instruments relating to Civil Defence need not be stressed. The title Companies is exceedingly important and, even if our local government readers are not very much concerned, there is a great deal with which our magisterial readers ought to be acquainted, since it has a bearing on rather technical provisions of the Companies Act, 1948, which may, at any time, have to be considered in magistrates' courts. Under the heading Compensation the list of instruments covers two pages of the book and, although some of those listed are not printed, for reasons explained in the preliminary notes at p. 203, those which are printed, covering some forty pages, are the sort that are likely to be referred to daily. Under Constitutional Law there are several lists of instruments, of the sort with which the clerks to magistrates and the legal staff of local authorities may have to be acquainted, even though a good many of them are of formal character. Here will be found, for instance, the instruments effecting transfers between different departments of the Government. In a different field, but one equally important for local government, will be found the instruments which deal with Coroners from the Coroners Rules, 1927, onward. Under the heading Courts there will be found a valuable introductory note upon the Legal Aid and Advice Act, 1949, and then the statutory instruments dealing with the jurisdiction and procedure of each part of the judicial machinery. There is much here with which the ordinary practitioner cannot be expected to be familiar, but to which, nevertheless, he may at any moment have to refer.

The two volumes are a welcome step towards the completion of what promises to be one of the notable achievements of post-war legal publishing, namely compilation of an annotated set of the statutory rules and statutory instruments in daily use, as a companion volume to *Halsbury's Statutes*. Although so many law books are now, inevitably, so much more expensive than they were before the war, the publishers have managed to keep the price of these volumes relatively low. It is perhaps expected that the sale will be correspondingly widespread : certainly the work is one which no prudent lawyer would wish to be without, and it is necessary to the completeness of every reference library.

The Criminal Justice Act, 1948 (annotated) Second Edition. By A. C. L. Morrison, C.B.E. and Edward Hughes. London : Butterworth & Co. (Publishers) Ltd. Price 21s. net, by post, 9d. extra.

Sydney Smith, Editor of the *Edinburgh Review*, is quoted by Hesketh Pearson in *The Smith of Smiths* as saying : " I never read a book before reviewing it : it prejudices a man so." The method is not here recommended, but if ever a reviewer could immediately feel confidence that a book put into his hand might safely be recommended to all who have duties in magistrates' courts, the book would be one with the names of A. C. L. Morrison and Edward Hughes on its title-page. Mr. Morrison was for many years senior chief clerk of the metropolitan magistrates' courts and Mr. Hughes succeeded him in that position—a more practical collaboration upon a work designed primarily for use in magistrates' courts could hardly be found.

The Criminal Justice Act, 1948 effected many changes in criminal law and a public service was done by the authors in quickly producing a first edition of this work carefully annotated with editorial guidance to the construction of the Act's eighty-three sections and ten schedules. In the three years that have passed since the first Order in Council brought sections of the Act into operation, there have been no less than thirty reported decisions of the High Court on the Act. Nearly all these decisions were anticipated by the editorial notes in the first edition, without a single error that we have been able to detect. Indeed, in one case, *R.* v. *Harris* (1950) 114 J.P. 535, the Court of Criminal Appeal used a footnote to s. 12 of the Act as the basis of its judgment : thus setting upon the work the seal of approval as the authoritative text-book on the Act.

Doubtless there will be more case law on points of construction still undecided, but we may hope that most of the problems of frequent occurrence have by this time been settled : time then for this work to appear in a second edition for permanent use.

Careful examination of the annotations to the sections of the Act, and comparison with those in the first edition, disclose that there has been much expansion, not only by the addition of notes on decided cases but also on the editorial guidance that is given. Alterations in the text include the amendments (affecting England) brought about by the Criminal Justice (Scotland) Act, 1949, and opportunity has been taken to include the Probation Rules, 1949, as amended, and the Evidence by Certificate Rules, 1948. There is also set out in an Appendix a table showing some limitations or restrictions on the imposition of certain kinds of punishments, which supplies a handy check on the verification of unsorted knowledge. We have often had occasion to use the first edition of this work and intend always to keep the second edition within arm's length.

Rayden on Divorce. Second Cumulative Supplement to Fifth Edition. By F. C. Ottway and Joseph Jackson. London : Butterworth & Co. (Publishers) Ltd. Price Main Work and Supplement £4 4s. net. Supplement alone 18s. 6d. net.

Although the fifth edition of *Rayden* was published in 1949, there has already been a need for two supplements, such has been the output of relevant legislation and decided cases. To practitioners, whether concerned in petitions to the High Court or in appeals from the magistrates' court, *Rayden* is invaluable. It is dangerous to use even the best text-book if it is out of date, and therefore everyone who possesses a copy of *Rayden* must be sure to obtain this second supplement. Being cumulative, the new supplement completely replaces the first and is the only one that need be consulted.

We are by now sufficiently used to supplements to make them easy of reference and no longer irksome. In these days of high prices for everything, including books, we can be grateful to publishers for an inexpensive supplement which obviates the need for a new edition of

a main work. This supplement is on the well-known and well-tried lines of a full noter-up with cross references to the main work, followed by a number of new statutes and rules. There is an appendix on Jurisdiction in Nullity by Mr. J. E. S. Simon. Including the index, the supplement occupies nearly three hundred pages, and the tables of statutes and cases are an indication of the amount of material that has been included.

Rayden, though primarily a book on divorce law and practice deals also with proceedings before magistrates, and among recent statutes included are the Maintenance Order Act, 1950, and summary jurisdiction rules thereunder, the Guardianship and Maintenance of Infants Act, 1951, the Legal Aid and Advice Act, 1949, and the Marriage Act, 1949. The Guardianship and Maintenance of Infants Act is printed in full, but was evidently passed at a time when it was too late to insert various references in the noter-up. This cannot matter so long as users of the supplement remember that the statute is there. The Legal Aid and Advice Act will be of additional importance to magistrates' courts when the time comes for bringing into operation provisions for legal aid in matrimonial cases in those courts. In the meantime, interest attaches to the article in the supplement dealing with the present working of that Act. The noter-up includes a new chapter to be called Chapter XVII on Wilful Neglect to Maintain, High Court Applications.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 11.

AN INGENIOUS IMPOSTER

A twenty-six year old native of Hereford, of no fixed address, appeared before the Dudley magistrates to answer a charge of obtaining milk and drugs to the value of 3*s.* from a Dudley hospital by false pretences, contrary to s. 32 (1) of the Larceny Act, 1916.

It was stated for the prosecution that the defendant walked into the hospital unaccompanied, and stated that he had just vomited about half a pint of dark and bright red blood, and he had, in fact, blood on the front of his clothes and about his mouth. He was seen by the resident Surgical Officer who examined him, and he informed the doctor that he had had a gastrectomy performed seven months previously. He also stated that two days earlier he had been involved in a road accident and injured his left wrist and right chest, anteriorly and posteriorly. He stated that since this accident he had severe pain in the upper abdomen and the pain was not relieved by medicine. The doctor found an operation scar on the abdomen consistent with his story of gastrectomy, but otherwise the examination was negative, apart from a temperature of 100.4. The doctor admitted him to the wards.

After admission defendant repeatedly " vomited " small amounts of bright red blood ; never any dark blood, thereby raising a doubt if it really came from the stomach. The blood was not frothy as if from the lungs. A tube was passed down to the stomach and aspirated but there was no blood in the contents of the stomach. Defendant complained frequently of very severe pain and periodically threw himself about on account of the " pain," once slightly injuring his ear. The resident Surgical Officer saw the patient fairly frequently and found that his pulse rate was remarkably consistent within the normal limits, despite the alleged great pain and repeated bleedings. His diet was entirely liquid, including a total of ninety-one ounces of milk.

Three days later, the doctor was called to the ward, where he was told that the patient was in possession of a razor blade. He was given the choice of going back to bed and behaving or leaving the hospital on his own responsibility. He went back to bed. Later the same evening he discharged himself from the hospital. He was brought back to the hospital later by a man from the British Road Services Depot. The doctor made inquiries at Manchester by telephone, but the British Road Services Depot where the defendant said he was employed knew nothing of him. The doctor then informed the local police.

A police officer went to the hospital at once and there saw the patient in bed in the hospital ward. The officer asked the man his name and he replied : " Raymond Richards." The constable then asked him for his address and he replied : " 6 John Street, Gorton, Manchester 6." The officer then asked him if he would care to tell him why he was in Dudley, and he replied, " I was in a road accident near Mansfield, I turned a ' Leyland ' Octopus over and killed my brother." The man became abusive to the policeman. The resident Surgical Officer then joined the police officer and said to him in the presence and hearing of the patient, " This man has been in the hospital since last Sunday, he has complained of bleeding from the stomach. All tests have proved negative and I am of the opinion he is malingering." The patient then got out of bed, dressed and expressed his intention of leaving the hospital. He then allowed blood to flow from his mouth on to the floor of the corridor. In the presence of the patient and the officer the doctor made a test of the blood for acid and found this to be negative. The doctor stated that the bleeding was self induced by biting the cheek or similar method. Until that moment the doctor had considered that he was really ill, but the failure to find acid in the blood convinced him of the patient's fraud. When the records were checked it was found that in addition to the ninety-one ounces of milk supplied he had also received seventeen ¼-grain doses of morphia and two grains of pheno-barbitone.

The patient later accompanied the officer to the police station where a sergeant, who in the meantime had been making inquiries by telephone, challenged the man with having given a false name and address.

Defendant admitted this and later made a voluntary statement admitting that he had lied to the doctor. The statement continued : " I have only done this twice before this year but I did it a lot eighteen months ago. I used to force myself to vomit blood to get into hospital."

The defendant, who pleaded guilty, asked the court to take into consideration two similar offences.

The Chairman, sentencing defendant to four months' imprisonment, stated that his action was mean and despicable.

COMMENT

Mr. C. W. Johnson, chief constable of Dudley, to whom the writer is much indebted for this report, states that it was later ascertained that defendant had been known to prick his tongue to create bleeding.

R.L.H.

No. 12.

BEGGING IN A CHURCH : AN ACQUITTAL

A thirty-six year old unemployed man of no fixed address, was summoned to appear at West London Magistrates' Court to answer a charge of placing himself in a public place to beg, contrary to s. 3 of the Vagrancy Act, 1824.

The facts of the case were very simple. The defendant entered a South Kensington Church during Divine Service and asked a member of the congregation for the price of a cup of tea. He was given 3*d.*, but the donor then caused the police to be called, and the defendant was arrested.

Mr. E. O. Lane, D.F.C., A.F.C., LL.B., of the Solicitor's Department, New Scotland Yard, attended the hearing before Mr. J. Lhind Pratt, more in the role of *amicus curiae* than to support the content that a church was a public place. He was instructed to bring to the attention of the learned stipendiary magistrate the relevant authorities.

Mr. Lane reminded the court that s. 3 prohibited a person from placing himself " in a public place, street, highway, court or passage for the purpose of begging," and pointed out that it was clear that if the expression " public place " was read *ejusdem generis* with " street, highway, court or passage " a church could hardly be considered to be included in the section.

He next drew attention to the old case of *Langrish* v. *Archer* (1883) 47 J.P. 295, in which it was held that a railway carriage, while used and travelling upon the line for the conveyance of passengers, was a public place within the meaning of s. 3 of the Vagrant Act, Amendment Act, 1873, and reminded the court that the wording in that section is " Gaming in any street, road, highway, or other open and public place " and pointed out that it would appear that the *ejusdem generis* rule was not applied in that case. Mr. Lane referred by way of contrast to the decision *In re Freestone* 1 H. & M. 93, where it was held that the above decision would not apply if the carriage was not being used at the time for the conveyance of passengers upon the line.

Mr. Lane also referred briefly to *R.* v. *Harris* (1871) 11 Cox 659, which decided that public urinal adjoining a public footway in a public park is a public place so as to subject parties committing gross indecencies therein to an indictment for a nuisance and to *Brennan* v. *Peek* (1948) 112 J.P. 10, in which it was decided that a public house is not a public place within the meaning of s. 1 (4) of the Street Betting Act, 1906, for though the public may be invited to enter they have not a *right* of access because the invitation may be withdrawn at any moment. Mr. Lane reminded the learned magistrate of the definition of " public place " in the Act of 1906, namely that it includes any public park, garden or sea beach or any unenclosed ground to which the public for the time being have unrestricted access.

Finally, Mr. Lane drew attention to two cases which have particular reference to churches. The first was that of *Cole* v. *P.C.* 443A [1937] 1 K.B. 316, where it was held by the Divisional Court that the Dean of Westminster Abbey had authority to make an order excluding the appellant from the Abbey, and on his refusal to leave was justified in ejecting him. The decision turned largely upon the fact that under letters patent from the Crown (Queen Elizabeth) and statutes pursuant thereto, Westminster Abbey is a Royal Peculiar, the government of which is vested in the Dean and Chapter. The case of Westminster Abbey, said Mr. Lane, was clearly different from that of the ordinary parish church, but the importance of the case lay rather in the *obiter dicta* of the judges who determined the case. It would appear from the judgments that the view taken by the court was that as regards the ordinary parish church a person who is not a parishioner has no legal right to attend a parish church even on Sundays or holy days, but if he is prevented from attending his own parish church on such days, he may present himself for admission to some other church where service is usually held.

In *Taylor* v. *Timson* [1888] 20 Q.B.D. 671, a case tried by Stephen, J., it was held that a church warden had no right forcibly to prevent a parishioner from entering the church for the purpose of Divine Service, even though the warden was of the opinion that he could not be conveniently accommodated. It was pointed out that under statute 5 and 6 Edward VI, c. 1, s. 2, every member of the Church of England is bound to go to church under pain of ecclesiastical censure, and this being so, Stephen, J., stated that, " It is rather a strong thing to say that church wardens have a right to prevent them from going to church. It seems to me that by imposing a general duty to go to church, the legislature confers a general right to resort to the church on the persons whom it obliges to go."

Mr. Lhind Pratt, in dismissing the case, stated that in his view the right of the public to enter a church was a restricted one. Therefore a church was not a " public place " within the meaning of s. 3 of the Act of 1824.

COMMENT

Mr. T. Macdonald Baker, C.B.E., T.D., D.L., solicitor to the Metropolitan Police, to whom the writer is greatly indebted for the very full report set out above, points out that a church being a place of public worship, it is open to argument that there is nothing to prevent any member of the public from entering, providing it is open and therefore such a church might be considered to be a " a public place." He adds, however, that a church is not open at all times, and further, it appears clear upon the authorities that the right of the public to enter a church is a restricted right only.

The writer has considered this case to be of sufficient interest to merit a very full report, and he hopes that readers will take a similar view.

R.L.H.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

The Defamation (Amendment) Bill, which was described in this column last week, was given a unanimous Second Reading in the House of Commons on Friday last.

EPILEPTIC CHILDREN

At question time in the Commons, Mr. Barnett Janner (Leicester N.-W.) asked the Secretary of State for the Home Department what was the result of his consultations with the Minister of Health and the Minister of Education about appropriate provision to be made for the disposal of cases by the juvenile courts for epileptic children who could not be accepted in approved schools.

The Secretary of State for the Home Department, Sir D. Maxwell Fyfe, replied that the few children suffering from major epilepsy who were sent to approved schools were placed wherever possible, in special schools for epileptic children provided under the Education Act, 1944, or, in appropriate cases, in hospital. The Minister of Education was anxious to increase the provision made in special schools as quickly as circumstances allow.

Mr. Janner : " Does the Home Secretary realize that the position is difficult in respect of children suffering from major epilepsy who come before juvenile courts in that those courts have no idea where they can send these children ? I am not speaking of children sent to approved schools, but of children who cannot be sent to approved schools because there is no place for them. Will the right hon. and learned Gentleman give magistrates directions as to where they can send these children, and provide accommodation for them ? "

The Home Secretary : " The approved school boys and girls under sixteen who suffer from major epilepsy are placed in special schools. Where they cannot be so placed because of shortages of places, they usually have to be discharged to their own homes. I am glad that the hon. Member has mentioned the matter because it enables me to state the practice. I shall certainly look into the point, which is one with which we are concerned."

DETENTION CENTRES

Replying to Mr. W. F. Deedes (Ashford), the Home Secretary said that the Criminal Justice Act, 1948, provided for the setting up of detention centres for offenders between the ages of fourteen and twenty-one who appeared to a court to be in need of a short period of discipline and hard work in conditions of strict confinement. No detention centres had yet been set up, but the first, at Kidlington, Oxfordshire, would be opened this summer to accommodate up to about sixty boys aged fourteen to sixteen. The building which the Prison Commissioners, with his authority and the consent of the Minister of Housing and Local Government, were acquiring at Goudhurst for a second centre would be suitable to take about sixty boys aged seventeen to twenty-one.

Mr. Deedes asked whether the Home Secretary was aware that there had been intense opposition to the Goudhurst scheme largely because of the deplorable number of escapes from, and incidents in, other institutions of that kind in recent months ?

Sir David replied that the detention centres would be " secure " and would not be open establishments like some of the training borstals. He thought they should try to put into operation that alternative to short sentences of imprisonment.

He told Lt.-Col. M. Lipton (Lambeth, Brixton) that the usual period for detention in those centres was three months, remission to the extent of a third of which could be earned ; but the period could vary from one to six months.

OBSCENE PUBLICATIONS

Lt.-Col. H. M. Hyde (Belfast, N.) asked the Secretary of State, in view of the fact that the police were issued with a list of books, the possession of which was likely to infringe the law, and which they were authorized to seize, whether the booksellers' trade could be supplied with such a list for their guidance.

Sir David replied that the only list of obscene publications which was circulated to the police was not a list of the kind described in the question, nor did it authorize the seizure of books. He had no power either to determine whether any publication was obscene or to authorize seizure. The list merely set out the titles of publications which had already been condemned by the courts in a given period.

CRUELTY TO ANIMALS

Mr. B. E. Nield (City of Chester) asked the Secretary of State for the Home Department whether he would consider taking steps to increase the penalties which might be imposed in the magistrates' courts upon those who were convicted of cruelty to animals.

Sir D. Maxwell Fyfe replied that the law provided for a maximum penalty of three months' imprisonment, either in addition or as an alternative, to a fine of £25. Where the owner of an animal was convicted of cruelty to it, a court had power to deprive him of ownership. He had no reason to think that those maximum penalties were not adequate.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF COMMONS

Tuesday, January 29

ELECTRICITY SUPPLY (METERS) BILL, read 2a.

INDUSTRIAL AND PROVIDENT SOCIETIES (NO. 1) BILL, read 2a.

Wednesday, January 30

CUSTOMS AND EXCISE BILL, read 1a.

CREMATION BILL, read 1a.

Thursday, January 31

TOWN DEVELOPMENT BILL, read 1a.

Friday, February 1

NATIONAL HEALTH SERVICE BILL, read 1a.

DEFAMATION (AMENDMENT) BILL, read 2a.

NOTICE

The next court of quarter sessions for the city of Winchester will be held at the Guildhall on Friday, February 29, 1952, at 10.45 *a.m.*

PERSONALIA

APPOINTMENTS

Mr. Arthur Bond, secretary and solicitor to the Eastern Electricity Board, has been appointed deputy chairman to the Yorkshire Electricity Board. Mr. Bond, who is forty-four years of age, was articled with Mr. H. D. Holland, solicitor of Darwen. He was admitted in 1929. He entered the local government service in 1930 and after holding appointments at Cleethorpes, Macclesfield and Luton, was appointed town clerk of Macclesfield in 1938 and later became town clerk of the county borough of Stockport. In 1948 he was appointed secretary of the Eastern Electricity Board.

Mr. G. K. Waddell, junior assistant solicitor to the Peterborough corporation since 1950, has been appointed senior assistant solicitor and Mr. D. L. Overton of the town clerk's office, Croydon, has, subject to his admission as a solicitor, been appointed to fill the vacancy.

RETIREMENT

Mr. H. E. Whiting, M.B.E., borough treasurer of Southgate, is to retire. Mr. Whiting has completed more than forty years of local government service, thirty-eight of which have been in the service of the Southgate borough council and its predecessor the Southgate U.D.C. He was for more than thirty years the honorary secretary of the Association of Rating and Valuation Officers. His successor is Mr. L. S. Jones who was appointed deputy borough treasurer of Southgate in 1949. Mr. Jones is forty-two.

OBITUARY

Mr. John Francis Eastwood, K.C., O.B.E., died in London on January 30. He had been a metropolitan magistrate since 1940 and had sat at Bow Street since 1947. Educated at Eton and Trinity College, Cambridge, he was called to the Bar by the Inner Temple in 1911 and joined the South-Eastern circuit. He was courts-martial officer for the London district from 1918 to 1922 and a legal officer in Ireland from 1920 to 1922. In this year he was appointed junior counsel to the Crown at the central criminal court in mint prosecutions and later was appointed counsel to the Crown in prosecutions generally at the London Sessions. He took silk in 1937.

Mr. Thomas Evans Morris died at Portmadoc on January 29 at the age of eighty-eight. Educated at King William's College, Isle of Man, and Queen's College, Cambridge, he was called to the Bar by the Inner Temple in 1890. He practised on the North Wales and Chester Circuit.

Mr. C. D. Benson, financial officer to the Banbury R.D.C. until September last when he retired after fifty years' service, died recently. Mr. Benson was clerk to the Banbury magistrates for twenty-five years. He retired from this position in December, 1951.

CLOTHES AND THE WOMAN

For the past three or four weeks, in all the great cities of England and Wales, large numbers of militant females, fighting, not as part of a centrally-directed underground movement, but as individual *franc-tireurs*, have been enthusiastically taking part in that series of guerilla engagements known euphemistically as " The Sales." At early dawn, starting from every quarter of the compass, they converge upon the centre of the city and take up their stations at strategic points surrounding the emporium of their choice, waiting in ill-concealed impatience for the beleaguered garrison within to open its doors. On the stroke of nine the portals are flung wide, and the mass of jostling, chattering, gesticulating women throw themselves with triumphant yells into the fray. Dresses, hats, frocks, shoes, stockings and furs, " astounding bargains," " specially reduced," at " sacrificial prices," are tossed hither and thither in the *mêlée* ; here and there a successful purchaser, her set features relaxing into a victorious smile, emerges from the throng ; with hat awry, dishevelled and breathless from the struggle, she holds her bargain shoulder-high and forces her way to the cash-desk *en route* for the street and homeward journey. Behind her the crowds still " rage furiously together, and the people " (in the eyes of the mere male) " imagine a vain thing." Can any kind of good, timidly inquire the husbands, come out of all this mass-suggestion and emotional turbulence, in these days of restricted budgets and inflationary spirals of ever-rising prices ?

But masculine caution and logic can never prevail against feminine intuition and clothes-sense when it has once got the bit between its teeth in the frenzy of buying at allegedly " bargain " prices. How little these enthusiasms have changed in the past two thousand years will be clear to anyone who reads the Mime of Theocritus, the Sicilian poet who flourished early in the third century B.C., describing, in the form of a dialogue, the afternoon outing of two Syracusan ladies. The two friends chatter together of the crowds in the streets, the dresses in the shops, the domestic shortcomings of their husbands, and the laziness of their maids, in the most vivid and lifelike manner, and the leading motive of clothes and their prices recurs persistently, in truly modern fashion, throughout the poem ; except for the names and local allusions the characters might be two twentieth-century housewives in London or New York.

No grosser error has ever been made by moralists than the easy assumption that the idea of modesty is innate in human beings, and that the desire for clothing is a symptom of modesty. The researches of anthropologists show that the reverse is true, and the varying fashions among different races and in different epochs indicate the conventional nature of the subject. By the Greeks of the Classical Age the oriental custom of wearing trousers was considered effeminate ; in the late nineteenth century A.D. the use by women of the garment to which Amelia Jenks Bloomer gave her name was regarded by an intolerant public as an immodest aping of masculine dress, and led on a famous occasion to the Court's upholding the refusal of an innkeeper to admit a lady cyclist, so attired, to the coffee-room (*R.* v. *Sprague* (1899) 63 J.P. 233). Among devout Moslems it is still considered highly indecent for a woman to let her face be seen ; a Chinese lady of the cultured class would regard it as improper to expose her feet. In Sumatra it is most immodest to uncover the knee, in Samoa the navel—two conventions now disregarded by western women on informal occasions. Among the Japanese it is not uncommon for both sexes to take baths together without any vestige of clothing, though the representation of the nude in art is highly reprobated. In the West the convention has undergone a complete revolution within the past forty years, as will be seen from photographs of the voluminous female bathing suits of the early years of the century in comparison with the two flimsy wisps of nylon which are sufficient to satisfy what is called decency on the beach today.

It is also to be observed that clothing, where it is worn at all, is almost invariably calculated to accentuate, not to conceal, the differences between the sexes, and the conclusion is generally accepted that, in the matter of sexual selection, concealment affords a greater stimulus than revelation. Anthropologists have remarked that sexual irregularities are far less prevalent among those races that go entirely nude than among those that wear some clothing. The great Finnish anthropologist, Westermarck,

has written : " The facts appear to prove that the feeling of shame, far from being the *cause* of man's covering his body, is on the contrary a *result* of this custom ; and that the covering, if not used as a protection from the climate, owes its origin . . . to the desire of men and women to make themselves mutually attractive." Though this runs counter to the story in the early chapters of *Genesis*, it is noteworthy that, even according to the account there given, no marital relations took place between Adam and Eve until their nudity had been concealed.

An apocryphal version of the story is given by Anatole France in his satirical novel *Penguin Island*, written in 1908. St. Maël, a short-sighted old gentleman, has sailed on his missionary voyage into Arctic regions ; landing at last on an island inhabited only by penguins, he mistakes them for human beings and baptizes the whole community. He then decides that the requirements of decency must be observed, and orders the monk Magis to clothe them. Magis remonstrates, pointing out that in their naked condition the two sexes pay little attention to one another. " But when the female penguins are clothed, the male will no longer realize exactly what attracts him to them. His vague desires will form themselves into all sorts of dreams and illusions . . . And all the time the female penguins will cast down their eyes and compress their lips and put on airs as if they kept a treasure under their clothes ! What a pity ! "

To demonstrate his point Magis seizes one of the ugliest and most clumsy of the females and squeezes her feet into sandals. " The soles, being two fingers high, will give an elegant length to her legs." Having, with a broad linen band, " compressed her sides, to the greater glory of her hips," he completes her toilet and leaves her to saunter along the crowded beach :

" A male penguin, who met her by chance, stopped in surprise, and retracing his steps began to follow her . . . Others, coming back from fishing, went up to her, stared and began walking behind her. Those who were lying on the sand got up and joined the rest. Continuously, as she advanced, more penguins, descending from the paths of the mountain, coming out of clefts in the rocks, and emerging from the water, added to the number of her followers."

The aged saint is troubled in spirit. " As with slow steps he went towards his hermitage, he saw little penguins, six and seven years old, compressing their waists with belts made of seaweed, and strolling along the shore to see if anybody would follow them."

The allegory is apt, and very true to life. As Magis puts it : " In order that the interest of that figure might be fully aroused in the male penguins it was necessary that they should cease to see it distinctly with their eyes, and thus induced to picture it in their minds." In other words, a romantic outlook between the sexes is enhanced by mystery ; where everything is displayed for all to see, emotional desire gives place to cold, critical analysis.

It is no doubt for this reason that the courtesies of courtship and the stability of marriage vary inversely with the degree of feminine emancipation in matters of dress. Robert Herrick, perhaps the greatest writer of love lyrics in the English language, once wrote of his mistress :

> " Whenas in silks my Julia goes
> Then, then, methinks, how sweetly flows
> The liquefaction of her clothes !
> Next, when I cast my eyes, and see
> That brave vibration, each way free,
> O how that glittering taketh me ! "

It is highly questionable whether he would feel the same mysterious attraction if he could look upon the modern English girl attired for " hiking," tennis or the bathing-pool, today.

A.L.P.

NEW COMMISSIONS

DURHAM CITY

Mrs. Evelyn Blyth, Abbey Mead, Quarry Heads Lane, Durham.
Harold James Boyden, Ardmore, The Avenue, Durham City.
Harry Leslie Cawood, 17, Field House Lane, Durham City.
Samuel Geoffrey Coulson, Springfield, Fieldhouse Lane, Durham.
Henry Cecil Ferens, Fernhill, Crossgate Moor, Durham.
Frank Illingworth, 1, Lowes Barn Bank, Durham City.

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Stanley Garner Cook, 28, High Street, Leighton Buzzard.
Lieutenant-Colonel William Owen Corbett, M.B.E., T.D., Antonies, Sharnbrook.
Clifford Eales, Gwalia, Mill Lane, Sharnbook.
Mrs. Constance Enid Hervey, Thatched Cottage, Gt. Billington, Leighton Buzzard.
Laurence Charles Lee, 132, Stanbridge Road, Leighton Buzzard.
Roderick Ian Wade-Grey, West End Farm, Stagsden.

GLAMORGAN COUNTY

Harold Irving Abraham, 15, Blaennant Street, Duffryn Rhondda, nr. Port Talbot.
Kenneth Hartley Berry, Church Street, Llantwit Major.
Wilfred George Bowden, 12, Aberdare Road, Abercynon.
Alfred Brockington, Red House, Wellwood Drive, Dianas Powis.
Mrs. Muriel Cannon, 11, Pontypridd Road, Barry.
William Crews, 62, Bradford Street, Caerphilly.
Mrs. Gertrude Violet Davies, The Villas, Brithdir.
George Gittins, 51, Brynavon Terrace, Hengoed, Glam.
Mrs. Bessie Ursula Phoebe Griffiths, Tynycoed Villa, Tonyrefail, Glam.
George Thomas Harvey, Ingledene, Abernant Road, Aberdare.
David Rees Howell, 9, Waunbant Road, Kenfig Hill.
Donald Henry Isaac, Danycoed, Port Talbot.
David Llewellyn Jenkins, Gregory Farm, Flemingstone.
Idris Daniel Jenkins, Lynwood, Pontyclun, Glam.
Mrs. Jennie Jenkins, Glanrhyd, Wern Road, Skewen, Glam.
William David James, Gwelfryn, Gwilym Road, Cwmllynfell.
Jenkin Francis John, Rhosla, Laleston, Bridgend.
Thomas Graham Jones, Newsagent, Bargoed.
Ronald Picton Lawrence, Sunnybank, Pyle.
Mrs. Alice Lee, The Dynevor Arms, Tirphil.
Mrs. Una Mary Marshall, 1, Grange Street, Port Talbot.
Rees Llewellyn Matthews, 19, Tudor Street, Port Talbot.
Frank Stanley Morgan, Herbert's Lodge, Bishopston, Gower.
Mrs. Gladys Dorothy Morris, Gladwyn, Laleston, Bridgend.
Mrs. Elizabeth Phillips, 28, Lon Isa, Rhiwbina, nr. Cardiff.
Howel Bulkeley Pierce, M.B., Ch.B., Bryn Cerdin, Mountain Ash.
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George Towyn Richards, Derwendeg, Marchant Street, Pontlottyn.
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Mrs. Lilian Scales, The Laurels, Penrhiwceiber.
William Robert Smith, Bidston, Ty-Draw-Road, Llanedeyrn, nr. Cardiff.
Hugh Phillips Templeton, Ty Draw Farm, St. George-super-Ely, nr. Cardiff.
Mrs. Mary Vaughan, Groeswen Ganol, Port Talbot.
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Morgan Williams, Berwyn, Mountain Road, Caerphilly.
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William Sidney Williams, Fairways, Parkgate Avenue, Hadley Wood, Herts.

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Harry Ethelbert Green, 55, Clarence Road, Newport, I.O.W.
Miss Lydia Wickenden Smith, 49, High Street, Wootton Bridge, I.O.W.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Bastardy—*Effect of adoption order.*

Section 11 (2) of the Adoption of Children Act, 1949, provided that where an adoption order was made after the commencement of that Act in respect of an infant who was illegitimate, any affiliation order in force with respect to the infant should cease to have effect. The Act came into force on January 1, 1950. Section 12 (1) of the Adoption Act, 1950, provides that where an adoption order is made in respect of an infant who is illegitimate, subject to certain provisions, any affiliation order in force shall cease to have effect. This Act came into force on October 1, 1950. It would appear that an affiliation order in respect of an infant, the subject of an adoption order made before January 1, 1950, remains in force. Do you agree? DOT.

Answer.

Yes. Application can, of course, be made under s. 30 (3) of the Criminal Justice Administration Act, 1914, to have the order revoked, but unless it is revoked it remains in force.

2.—Billiards—*Premises used as a club.*

I was interested in the answer concerning billiards clubs given in your issue of November 3, 1951, and would be grateful for your further observations on this matter.

In the case I have in mind, the playing is strictly confined to members who pay a subscription fee, but there is no committee and the "club" is run for profit. There is no play on Sundays, nor when "public" billiards are prohibited on premises licensed for the purpose.

Is the case of a billiards "club" owned and run by a private individual, is an offence committed if the profits are to his benefit? Does the fact that members have no control over the affairs of such a club render it a public billiards hall?

Your valued opinion on these points would be greatly appreciated. NILL.

Answer.

We feel that we cannot fairly enlarge on our answer to P.P. No. 2 at 115 J.P.N. 705.

Many things combine to make an association into a "club" and our previous answer was intended to do no more than convey our opinion that public billiards playing does not become something else merely by the device of calling the premises a "club."

Whether, in a particular case, unlicensed "public billiards playing" is carried on in contravention of the Gaming Act, 1845, is a question of fact to be decided by the justices in a prosecution.

3.—Contract—*Accepted tender found to be erroneous—Contractor seeking augmented price.*

The council recently issued an invitation to tender for supplies. A tender for certain items which were declared to be not liable to purchase tax was accepted. After the goods were delivered the tenderer indicated that his previous statement as to purchase tax was in error and that tax was payable on certain of the items.

Will you kindly advise whether the council:

(*a*) must pay the tax chargeable; and

(*b*) may pay the tax chargeable without objection being taken on audit that it is without consideration and gratuitous.

In the changed circumstances so arising the accepted tender is no longer the lowest received. ABE.

Answer.

As we understand it, the contractor quoted a price which now turns out to be less remunerative than he thought. It is a mere accident that he attributes his misquotation to purchase tax. Every trader has known for years about purchase tax, and it was his business, before quoting, to verify his prices. The council should decline to pay more than the contract price. We can see no justification (and certainly no legal authority) for an extra payment in these circumstances, which are entirely different from those arising at the outbreak of war, when contractors were often faced with unforeseeable contingencies.

4.—Criminal law—*Larceny—Peas growing in field—Whether any offence.*

I should appreciate your assistance on the following point:

Section 37 of the Larceny Act, 1861, makes it an offence to steal or "destroy or damage with intent to steal" any cultivated root or plant, etc., growing elsewhere than in a garden or nursery ground, etc. Without authority a man enters a field with a sack and proceeds to pick and fill his sack with ripening peas growing in that field, which he takes away. He does no obvious damage beyond the picking of the ripe pods. Do you consider he can properly be convicted under the above section since he neither steals a plant or root, nor damages the plant with intent to steal the plant.

I do not think he could be convicted of stealing a part of a plant, particularly in view of s. 35 of the same Act, which specifies the whole, or part of any tree, etc., and again, in view of the opinion expressed in *Stone*, that fruit growing in the same circumstances cannot be stolen, implying presumably that fruit is not part of a tree. (Page 1468 *Stone*, 1951).

If you consider he cannot properly be convicted under s. 37 it would appear that he commits no criminal offence and I should be glad to have your observations on this point. SAC.

Answer.

It certainly seems that this ought to be a criminal offence, but if the peas are regarded as fruit of the plants, which we think correct, then there seems to be no larceny at common law or by statute, in the circumstances of this case. It is stated in the question that there is no obvious damage, but we should be inclined to hold that stripping plants such as peas of their fruit is doing damage to them, and that a prosecution might be brought under s. 14 of the Criminal Justice Administration Act, 1914.

5.—Evidence—*Cross-examination of police witness as to statement taken by him from another witness—Admissibility.*

At a petty sessional court a police witness was questioned about the contents of the statement he had taken from a witness who had been called for the prosecution. The questions were asked by the defending solicitor and it appears that the statement was taken from the witness in the presence and hearing of the defendant. It appears to me that under those circumstances he could be asked to read the statement provided that he was afterwards asked what the defendant said about it. It also appears to me that under other circumstances than this it would be improper for the police witness to be asked questions about statements of evidence that he had taken from witnesses.

Would you mind confirming that this is correct. SOL.

Answer.

We agree. If it is sought to test a witness's credit by showing that he has previously made a statement which is inconsistent with the evidence he has given, the questions should be put to the witness himself. If the witness denies the previous statement, evidence may then be given to contradict him. *See* the Criminal Procedure Act, 1865, ss. 4 and 5.

6.—Game—*Poaching Prevention Act, Public place—Other conveyance—Motor launch on river.*

Section 2 of the Poaching Prevention Act, 1862, empowers a constable in any highway, street or public place to search any suspected person and also empowers him to stop and search any cart or other conveyance.

X had been on land in unlawful pursuit of game and was proceeding in a motor boat on a river widely used by the public when he was summoned to a landing stage at the river bank by a police officer. The landing stage does not adjoin a highway and on coming ashore X found himself in a joiner's or boat builder's yard adjoining a public house which can be shut off from the public highway by gates. The landing stage is apparently used by members of a boat club nearby. The police officers went aboard the motor boat and on searching found game and guns which they seized.

I see from 43 J.P.N. 666 that you are of opinion that the *ejusdem generis* rule applies to the words "or public place" and on such a construction it would appear that the yard could not be held to be a public place within the meaning of the section. It may be argued that the seizure took place aboard the boat on the river. I shall be grateful if you will inform me:

(1) If you concur that the yard is not a public place within the section;

(2) Whether a river is such a public place;

(3) If the *ejusdem generis* rule also applies to the words "cart or other conveyance" in the section, and whether a motor launch constitutes a conveyance for the purpose of the Act. SAL.

Answer.

(1) If access is not allowed freely to the public we should hold the yard not to be a public place.

(2) There may be a public right of navigation on a river in which case there is a right of way similar to a right of way on land (*see* 33 *Halsbury*, 573). If the river in question is such a river we incline to the view that it might come within the words of the section, as being public and in some sense resembling a highway.

(3) The rule must be applied with due regard to another rule, *viz.*, that statutes should be so construed as to carry out their intention (*see* 31 *Halsbury* 495 and supplement). Moreover we doubt whether the use of the single word "cart" by itself constitutes a *genus* and we think a motor launch which can convey passengers or goods can properly be described as a conveyance.

7.—Husband and Wife—*Maintenance order in respect of child—Continuance after age of sixteen attained—Application made when child already sixteen.*

Has any court any power to entertain an application for a fresh order or the variation of an existing order in respect of the maintenance of a child who has attained the age of sixteen years?

There was an order by consent by a divorce registrar, following proceedings for dissolution, of £52 *per annum* payable monthly until the child attained sixteen. It is appreciated that the magistrates could extend the order if it had been their order and that the High Court always had power to award maintenance up to the age of twenty-one. On the other hand it seems that the order is now defunct. The child attained the age of sixteen within the last month. Sto.

Answer.

In *Norman* v. *Norman* [1950] 1 All E.R. 1082; 114 J.P. 299, it was decided that an application under s. 2 of the Married Women (Maintenance) Act, 1949, for the continuance of an order after a child of the marriage attained the age of sixteen, could be entertained, even though made after the child had attained that age. The fact that the order had, in a sense, expired, did not stand in the way of variation.

8.—Licensing—*Licensed premises forming part of larger premises—Whether licence-holder may operate in non-licensed rooms by virtue of an occasional licence.*

In this town, A, are premises known as the "Winter Gardens." They are owned by a limited company known as the Winter Gardens Ltd., of which one DT is the managing director.

The premises are one building. On the ground floor is a vestibule leading from the street, and beyond this a quite large foyer. Off the foyer is a small room used as a bar for the serving of intoxicating liquor, a ladies' cloakroom, a gent's cloakroom, a gent's toilet, and the manager's office. The foyer is furnished with easy chairs and tables. Leading from the foyer is a large ballroom at the far end of which is a small stage, large enough to accommodate about a twelve-piece orchestra. The first floor of the premises is built above the foyer and the rooms leading off it. This consists of a restaurant at the front of the building, and leading off this room are a gent's cloakroom and toilet, a kitchen, a small private room, a dispense bar for the service of intoxicating liquor, a staff cloakroom and a ladies' toilet.

The premises are used principally as a ballroom. During the summer, from about May to September, the room on the first floor is opened as a restaurant for the service of meals to the public. During the winter the room is not used for this purpose. All the year round, but mainly during the winter months from September to May, dances and balls are held in the ballroom on the ground floor. These functions are held practically every night. The premises are good class, and cater for select dances and balls.

On isolated occasions, the ballroom is used for presenting a stage play; this use is generally restricted to about one week, when a local amateur dramatic society present a play for charitable purposes.

The managing director, one DT, made application to the licensing justices at brewster sessions in 1950, for a justices' full on-licence for the sale of intoxicating liquors at premises known as the Winter Gardens, and applied for a condition to be inserted in the justices' licence that the sale of intoxicating liquor should be limited to persons taking meals in the said restaurant.

The justices' granted a full on-licence to DT and imposed a condition thereon, as follows:

"This justices' licence authorizes him to hold an excise licence for the sale by retail of all intoxicating liquors to be consumed on the premises known as the Winter Gardens, and situate in the borough of A of which premises A Winter Gardens Ltd., are the owners. Conditions: That the sale of intoxicating liquors shall be limited to persons taking meals in the restaurant of the said premises and shall only be served during the course of the said meals."

The managing director has also been granted a music, singing and dancing licence, and a theatre licence.

So far as the theatre licence is concerned, the right to have a bar has been surrendered, and the licence has been granted on this understanding. I believe a condition that an excise licence shall not be applied for has been imposed.

On each occasion that a dance or ball is held on the premises, DT, the managing director, applies to the justices, and is granted, an occasional licence. At these functions, the bar leading off the foyer on the ground floor is opened and intoxicating liquor supplied by way of sale to persons attending the function. The occasional licences are granted for a period from 8 *p.m.* to midnight.

It appears that the justices have been led to believe that the justices on-licence granted to these premises merely makes the restaurant on the first floor the licensed premises, and that the remainder of the premises, *i.e.*, the whole of the ground floor, are not licensed premises. With this view before them, they no doubt consider it proper that an occasional licence can be granted to DT, the managing director, for "other premises," the "other premises" being the ground floor of the same premises.

The justices have also been led to believe that the first-floor of the premises are licensed premises holding a justices' on-licence, and the ground floor is a theatre, and premises quite apart from the upper floor, in which the prescriptive right to an excise licence has been surrendered.

With this in mind, the managing director has been advised that when the premises are used for a function while the theatre licence is not in operation, occasional licences may be applied for in respect of any special occasion.

The following is an extract from the opinion he obtained:

"The question of the advisability of giving an undertaking on the grant of a licence for the theatre that the applicants will not apply for and obtain an excise licence in respect of the theatre.

"I think that it would be wise to concede this point if it is possible to do so. It may, however, be possible to get the undertaking so worded as to confine it to the times during which the theatre is being used under the theatre licence so that the undertaking would not apply when the music licence was in operation. If this form of undertaking can be secured it will then be possible to apply for occasional licences for any special occasions on which functions are going to be held while the theatre licence is not in operation."

In originally considering the application, reference was made to s. 37 (1) (*a*) of the Licensing (Consolidation) Act, 1910, and it is now held by the interested parties that the "two rooms" mentioned therein mean that the justices issued their licence in respect of two rooms of the premises only, *i.e.*, the restaurant and the vestibule attached thereto. It may here be pointed out that there is no vestibule attached to the restaurant; the only vestibule is the one on the ground floor, from

which the restaurant is reached by means of a staircase leading from the vestibule.

The writer is of the opinion that the whole of the premises are "licensed premises," and that a justices' on-licence cannot be granted for a room or two rooms in one set of premises, leaving the remainder of the rooms not "licensed premises":

That the managing director, DT, cannot legally be granted an occasional licence in respect of those premises.

In connexion with this case:

(*a*) Is the justices' on-licence properly granted in order to permit the sale of intoxicating liquor with meals?

(*b*) Does the justices' licence make the whole of the premises "licensed premises"?

(*c*) Are justices empowered to issue a justices' licence in respect of one or two rooms only in one set of premises, so that the remainder of the premises are regarded as not being "licensed premises"?

(*d*) Even if (*c*) is permissible, can the remainder of the premises be regarded as "other premises" for the purpose of an occasional licence?

(*e*) Can a theatre licence be issued in respect of these premises to the person who already holds a justices' on-licence for the same premises, or, alternatively, can a justices' on-licence be issued to the person who holds the theatre licence for the same premises?

(*f*) Is it in order for one person to hold at one and the same time, in respect of this particular one set of premises, a justices' on-licence, a music singing and dancing licence, a theatre licence and an occasional licence?

(*g*) If you consider that the whole of these premises are "licensed premises," will you please confirm (i) that the licensee cannot hold an occasional licence for the same premises, and (ii) that an occasional licence cannot be granted to another licensee for those premises?

(*h*) If you consider that the first floor only is the "licensed premises" and that the ground floor is not "licensed premises," is it in order for the holder of the justices' licence for the first floor to be granted an occasional licence for the ground floor?

(*i*) Could you suggest a proper method of licensing the premises, to permit both the service of drinks with meals in the restaurant, and the supply of drinks to persons attending balls and dances? NAILER.

Answer.

(*a*) Yes: the condition is reasonable and by no means unusual.

(*b*) No: it is not improper to define the licensed premises by metes and bounds (*Stringer* v. *Huddersfield JJ.* (1875) 40 J.P. 22).

(*c*) Yes: *see Commissioners of Customs and Excise* v. *Griffith* (1924) 88 J.P. 85.

(*d*) We think so: in the case cited in (*c*) the remainder of the premises even included a separate off-licence.

(*e*) We know of no law to prohibit this.

(*f*) We know of no law to prohibit this.

(*g*) Does not arise.

(*h*) We think so: it is a grant to a holder of a justices' on-licence to sell intoxicating liquor at an "other place" (Revenue Act, 1862, s. 13).

(*i*) It would be a proper method to license the whole of the premises, with conditions attached under s. 14 of the Licensing (Consolidation) Act, 1910, to secure that intoxicating liquor would be sold and consumed in the different parts of the premises to meet the demand that is sought to be catered for. This could be done by the surrender of the existing licence coupled with an application for a new licence with a set-off in monopoly value (*see* Finance Act, 1947, s. 73).

9.—Master and servant—*Dismissal upon conviction—Period for which wages due.*

It occasionally happens that employees of my council are charged by the police with larceny of the council's property. In such cases, it is the council's practice, upon receipt of information that a charge is pending, to suspend the employee from duty until the charge has been heard and determined by the appropriate court. If the employee is convicted of the charge, it is usually the case that he is summarily dismissed from the service of the council. I shall be glad to know whether, in your opinion, the employee is entitled in such circumstances to payment of full wages, as from the date he was suspended until the termination of his appointment. It may be assumed that his conditions of service are silent on the point. Any references you may be able to give to relevant authorities will be much appreciated. CLERK.

Answer.

There is ample authority in the text books for dismissal without notice upon conviction, but until conviction the employee cannot be so dismissed. Direct authority upon the wage payable is scarce, perhaps because the employee is not likely to sue for wages unless advised that he can establish wrongful dismissal. Upon general principles, however, the matter of the wage is plain. Suspension is usually a wise precaution while proceedings are in progress, but the relation of master and servant remains, and the master, who, for his own good reasons, prevents the servant from working, is not on that account entitled to stop his wages. Wages are therefore due up to the date of dismissal, or exceptionally (*i.e.*, where summary dismissal occurs in course of a period the whole of which has to be worked in order to earn the wages) up to the end of the preceding wage period. Useful decisions are in *Boston Deep Sea Fishing Co.* v. *Ansell* (1888) 59 L.T. 345; *Healey* v. *Societé Française Anonyme* (1917) 117 L.T. 93.

10.—Prisons—*Rights of justices to visit.*

We would be glad of your advice upon the following:

Years ago a justice of the peace, on showing his credentials, could demand admission to the prison to which persons sentenced by his bench were sent, and to be shown over by the governor or someone deputed by him. Does this still hold good, and if so in what Act of Parliament or in what regulation does it occur?

If a justice of the visiting justices inspects the prison, may he take with him a fellow magistrate, or should they see over the prison on a separate occasion? SAX.

Answer.

By s. 15 of the Prison Act, 1877, it is provided that "Any justice of the peace having jurisdiction in the place in which a prison is situated or having jurisdiction in the place where the offence in respect of which a prisoner may be confined was committed may, when he thinks fit, enter into and examine the conditions of such prison and of the prisoners therein . . ." This is apart from the rights and duties of justices who are members of a visiting committee, and does not extend to visiting prisoners under sentence of death, or communicating with others except on the subject of their treatment. As to a visiting justice taking a fellow magistrate with him we think this is a matter for arrangement with the governor.

11.—Rating and Valuation—*Voluntary school—Rates overpaid in error.*

I refer to P.P. 9 at 115 J.P.N. 674, regarding a claim for refund of rates paid in respect of a voluntary school. Whilst the status of the school, both as a transitionally assisted school up to June 5, 1950, and as an aided voluntary school since then, would appear to support a claim for exemption, there would be no authority for repaying rates which had been charged on the occupier shown in the rate-book, and on the

basis of the rateable value shown in the current valuation list. The rate-book will presumably continue to show the name of the occupier, the rateable value, and amount of rate due. Until either a proposal is made to reduce the value to nil, or the next draft valuation list shows a nil valuation, the rating authority will write off the amount of current and future rates as irrecoverable, quoting s. 64 of the 1944 Act. Rates due from April 1, 1945, to March 31, 1951, have however been charged on the actual occupier, who cannot now claim refund, as the mistake seems clearly one of law, and the rating authority, having no power to amend previous rates, would be risking surcharge if such a claim were met. BALL.

Answer.

The rule that money paid under a mistake of law is not normally recoverable by action from the payee is a rule evolved by the courts to be applied where the person who paid the money has recourse to legal proceedings. We know of no rule, or principle of conduct, precluding repayment of money paid by reason of such an error without the payee's causing the other party to take proceedings. In private affairs, and in ordinary business life, the recipient would repay as a matter of decency, without stopping to ask whether the mistake was one of law or fact. We have often expressed the opinion (at 114 J.P.N. 217 and 577 in this very context) that local authorities can, and therefore should, be not less honest than other people—at 115 J.P.N. 217, we indicated that, in our experience, the Local Government Board and its successors had regularly taken the same line.

12.—Refreshment houses—*Food sold after 10 p.m. for consumption off premises—Whether licence required.*

I would refer to s. 6 of the Refreshment Houses Act, 1860, and *Howes* v. *Inland Revenue Board* (1876) 41 J.P. 423, and should be glad to have your opinion whether a person keeping a shop from which food is sold after 10 *p.m.*, for consumption off the premises, must take out a licence under the Act. Would it make any difference if in fact a shopkeeper allowed food to be consumed on the premises although the article when sold, *e.g.*, in a fish and chip shop, was intended by the shopkeeper for consumption off the premises and no seating or other accommodation was provided in the shop? NON.

Answer.

Although s. 6 of the Refreshment Houses Act, 1860, does not in terms distinguish between refreshments sold for consumption on and consumption off premises, it is noted in *Paterson's Licensing Acts*, as a footnote to the section, that the excise authorities appear to act on the view that no licence is required where the premises are opened for the sale of refreshments for off-consumption only, and this seems to be consistent with principle.

What is consumption off the premises would be decided not by reference to intention but to conduct: if in fact the shopkeeper habitually allows on-consumption he cannot avoid the consequences of so doing by saying that the food was intended for off-consumption. *Howes* v. *Inland Revenue*, *supra*, makes it clear that premises may require to be licensed under the Act although no seating or other accommodation for on-consumption is provided.

13.—Road Traffic Acts—*Goods vehicle—"C" licence appropriate to another vehicle displayed on it—No goods being carried—Offence under s.* 34 (1) *Road and Rail Traffic Act*, 1933.

There has been some controversy here on the following matter and I would appreciate your valued opinion:

A motor van, licensed goods was seen stationary on the highway displaying a "C" carriers' licence of a different index number to that of the van or the road fund licence issued in respect of it. The van was locked and at the time was not carrying any goods and was driven away before the driver could be interviewed. Later, on being interviewed regarding the display of the carriers' licence, the driver, who was also the owner, said: "I was using the van for pleasure on the date in question and only use it for that and for getting to and from business. It is fitted with fixed seats. I may wish to use it under a carriers' licence in future and have written to the licensing authority. I also own another vehicle for which I have a carriers' licence and I exhibited this licence on the van until I heard from the licensing authority."

In my opinion an offence has been committed under s. 34 (1) Road and Rail Traffic Act, 1933, in that the owner was displaying a document calculated to deceive, that the van was authorized to carry goods whereas in fact it was not, although it was not necessary for him to have a carriers' licence for the purpose for which he stated it was being used. JEMO.

Answer.

We think that to display a "C" licence on an unauthorized vehicle is, *prima facie*, to use that licence with intent to deceive. Unless the object of so displaying the licence is to deceive the police and others on a casual inspection, into believing that the vehicle is an authorized one, it is difficult to see what is the purpose of this use of the licence.

14.—Small Dwellings Acquisition Acts, 1899 to 1923—*Use not to be a nuisance—Medical consulting room.*

The council have received an application from a doctor of medicine for loan to enable him to acquire a house under the above Acts. He is desirous, if possible, of using one room in the house as a consulting room. Section 3 (*e*) of the 1899 Act states that the house shall not be used for the sale of intoxicating liquors or in such a manner as to be a nuisance to adjacent houses, and the footnote to this section in *Lumley* states that the use of the house for trade or for taking in lodgers is not prohibited by the Act. Can you please advise me whether or not the professional use to which the doctor proposes to put part of the house is permissible or not. ANT.

Answer.

We suppose that the statutory provision against nuisance is to be construed as it would be on a covenant in a conveyance. Use of premises for a medical practitioner's consulting room has never (we think) been held to be a nuisance, and we do not think it ever would be.

15.—Street lighting—*Unauthorized turning out light.*

The owner of a house adjacent to which my authority maintain an ordinary gas lit street light is in the habit of climbing the standard at night and switching off the light in order, it is alleged, to prevent the children who are attracted by the light from playing outside his house. No specific danger or nuisance has arisen as a result of the lamp being out but it is a practice which my council obviously wish to stop. I am unable to find any specific offence with regard to lamps similar to s. 55 of the Lighting and Watching Act, 1833, and I should be glad if you could advise me whether, apart from the law of trespass, a person switching off the light is committing any offence for which he can be prosecuted. BCA.

Answer.

Section 28 of the Town Police Clauses Act, 1847, incorporated by s. 171 of the Public Health Act, 1875, makes it an offence "wilfully and unlawfully" to extinguish the light of any lamp.

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Common Law Clerk

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Applications, stating age, qualifications, experience and present salary, together with the names of three referees should reach me not later than February 25, 1952.

K. TWEEDALE MEABY,
Clerk of the County Council.

Shire Hall,
Nottingham.

HAMMERSMITH

ASSISTANT SOLICITOR, Grade A.P.T. 7/8 (£685/25/810) plus London weighting. Candidates must be experienced in advocacy and conveyancing; previous municipal experience desirable but not essential.—Application forms (returnable by February 18) from Town Clerk, Town Hall, W.6.

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Salary Grade IV (£530 × £15 × £575).

Forms of application may be obtained from me.

Closing date—February 14.

A. NORMAN SCHOFIELD,
Town Clerk.

Town Hall,
Watford.
January 31, 1952.

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APPLICATIONS are invited from persons with not less than two years' experience in legal work for the appointment of Class I Law Clerk on the permanent staff of the Council at a commencing salary of £530 per annum in grade A.P.T. IV rising to £620 per annum, the maximum of grade A.P.T. V, plus London "weighting" of up to £30 per annum at 26 years of age.

Applicants must be accustomed to handling conveyancing work with only slight supervision, and experience in common law work will be an advantage.

The appointment will be subject to the National Joint Council Scheme of Conditions of Service; to the provisions of the Local Government Superannuation Act, 1937, and to a medical examination.

Forms of application must be obtained from the undersigned and returned by not later than February 25, 1952.

H. DIXON CLARK,
Town Clerk.

Town Hall,
Upper Street, N.1.

BOROUGH OF CROSBY

Appointment of Deputy Town Clerk

APPLICATIONS are invited from persons with legal qualifications for the permanent appointment of Deputy Town Clerk at a salary in accordance with Grade X (A.P. & T. Division) of the National Scheme of Conditions of Service.

Applicants must have good experience in local government law and administration, conveyancing and advocacy.

The appointment will be subject to the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination.

Forms of application may be obtained from the undersigned to whom they must be returned duly completed, not later than February 20, 1952.

Canvassing in any form will be a disqualification.

HAROLD O. ROBERTS,
Town Clerk.

Town Hall,
Waterloo,
Liverpool, 22.
January 30, 1952.

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THERE are vacancies for men and women probation officers in the London Probation Service. Appointments will be made by the Secretary of State for the Home Department, and will be subject to the Probation Rules and the Probation Officers (Superannuation) Order, 1948. The persons appointed may be required to serve in any part of the area, and will be assigned to such courts as the Secretary of State may from time to time decide.

Application forms may be obtained from Probation Division, Home Office, Whitehall, London, S.W.1, and should be returned not later than March 1, 1952.

BEDFORDSHIRE Combined Area Probation Committee invite applications for the appointment of whole-time Male Probation Officer centred at Dunstable. The appointment is subject to the Probation Rules, 1949-50 and to superannuation deductions and medical examination. Applications, stating age, qualifications, etc., and names of two referees to the Clerk of the Peace, Shire Hall, Bedford, by February 21, 1952.

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